

A NONSUBSTANTIVE REVISION  
OF STATUTES RELATING TO  
THE LICENSURE OF INSURERS AND RELATED ENTITIES,  
LIFE INSURANCE, AND CERTAIN GROUP BENEFIT PROGRAMS  
FOR GOVERNMENTAL EMPLOYEES

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Revisor's Note  
(End of Chapter)

V.T.I.C. Article 11.13 provides that "[m]utual life insurance companies are authorized to transact business throughout this State and in other states to which they may be admitted." The revised law omits the quoted language as unnecessary because a company's certificate of authority issued by the Texas Department of Insurance provides sufficient authority for the company to engage in the business of insurance in this state. Similarly, an authorization from another state provides sufficient authority in that state. The omitted law reads:

Art. 11.13. Mutual life insurance companies are authorized to transact business throughout this State and in other states to which they may be admitted; . . . .

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CHAPTER 883. MUTUAL INSURANCE COMPANIES OTHER THAN

MUTUAL LIFE INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 883.001. DEFINITIONS. In this chapter:

(1) "Domestic mutual insurance company" means a mutual insurance company organized under this chapter.

(2) "Foreign mutual insurance company" means a mutual insurance company organized under the laws of a jurisdiction other than this state and authorized to engage in the business of insurance on a mutual plan in any state, district, or territory.

(V.T.I.C. Arts. 15.14 (part); 15.15 (part); New.)

Source Law

Art. 15.14. Any such mutual insurance company organized outside of this State and

authorized to transact the business of insurance on the mutual plan in any state, district or territory, . . . .

Art.15.15. Every such mutual insurance company . . . organized within . . . the state . . . .

#### Revisor's Note

The definitions of "domestic mutual insurance company" and "foreign mutual insurance company" are added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definitions.

#### Revised Law

Sec. 883.002. APPLICABILITY OF CERTAIN GENERAL LAWS. (a) Except as otherwise provided by law, domestic and foreign mutual insurance companies organized or operating under this chapter are subject to the laws applicable to:

(1) a stock insurance company engaging in the same kind of insurance;

(2) investments;

(3) valued policies;

(4) policy forms and rates;

(5) reciprocal or retaliatory laws;

(6) insolvency and liquidation; and

(7) publication and defamatory statements.

(b) This chapter does not exempt a domestic mutual insurance company from being subject to other laws of this state governing the incorporation, organization, regulation, and operation of a company or organization writing insurance in this state. (V.T.I.C. Arts. 15.15 (part), 15.16.)

#### Source Law

Art. 15.15. Every such mutual insurance company, whether organized within or without the state, shall be subject, except as otherwise provided by law, to all general provisions of law applicable to stock insurance companies transacting the same kinds of insurance, investments, valued policies, policy forms and rates, reciprocal or retaliatory laws, insolvency and liquidation, publication and defamatory statements, and . . . .

Art. 15.16. Nothing in this chapter shall be construed to mean that any company or association incorporated or organized

hereunder shall be exempt from the provisions of the General Laws of this State, heretofore or hereafter enacted governing the incorporation, organization, regulation and operation of companies or organizations writing insurance in this State.

Revised Law

Sec. 883.003. APPLICABILITY OF TEXAS NON-PROFIT CORPORATION ACT. Except to the extent of any conflict with this code, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a domestic mutual insurance company. The commissioner has each power and duty of, and shall perform each act to be performed by, the secretary of state under that Act with respect to mutual insurance companies. (V.T.I.C. Art. 15.05-A (part).)

Source Law

Art. 15.05-A. Insofar as the provisions of the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), are not inconsistent with or contrary to any applicable provisions of the Insurance Code, as amended, the provisions of the Texas Non-Profit Corporation Act as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), shall apply to and govern mutual insurance companies as defined in Article 15.01 of this chapter. Provided however, . . . wherever in the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), some duty, responsibility, power, authority, or act is vested in, required of, or to be performed by the secretary of state, such is to be vested in, required of, or performed by the Commissioner of Insurance insofar as such mutual insurance companies are concerned.

Revisor's Note

(1) V.T.I.C. Article 15.05-A states that the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) shall "apply to and govern" mutual insurance companies. The revised law omits the reference to "govern" because, in context, "govern" is included within the

meaning of "apply to."

(2) V.T.I.C. Article 15.05-A refers to the Insurance Code "as amended" and to the provisions of the Texas Non-Profit Corporation Act "as amended." The revised law omits these quoted references because under Section 311.027, Government Code (Code Construction Act), unless expressly provided otherwise, a reference to a statute applies to all reenactments, revisions, or amendments of the statute.

(3) V.T.I.C. Article 15.05-A refers to a "duty, responsibility, power, [or] authority" of the secretary of state and commissioner of insurance. The revised law substitutes "power and duty" for the quoted phrase because "responsibility" is included within the meaning of "duty" and "authority" is included within the meaning of "power."

(4) V.T.I.C. Article 15.05-A refers to acts "vested in, required of, or to be performed by" the secretary of state and commissioner of insurance. The revised law omits the references to "vested in" and "required of" because, in context, these phrases are included within the meaning of the phrase "to be performed by."

[Sections 883.004-883.050 reserved for expansion]

SUBCHAPTER B. FORMATION, STRUCTURE, AND MANAGEMENT  
OF COMPANY  
Revised Law

Sec. 883.051. FORMATION OF COMPANY. (a) Twenty or more persons, a majority of whom are residents of this state, may incorporate in accordance with this chapter to engage in the business of mutual insurance as provided by this chapter.

(b) To form a mutual insurance company, each incorporator must sign and acknowledge the articles of incorporation of the company.

(c) The incorporators of a proposed mutual insurance company are subject to Sections 822.001, 822.051, 822.057(a)(1)-(3), (b), and (c), 822.058(a), 822.059, 822.060, and 822.201, except that:

(1) the minimum number of persons required to adopt and sign the proposed company's articles of incorporation under Section 822.051 is equal to the number of the proposed company's incorporators as provided by Subsection (a); and

(2) the unencumbered surplus of the mutual insurance company is capital structure for purposes of Section 822.201.

(V.T.I.C. Arts. 15.01, 15.02 (part), 15.04.)

Source Law

Art. 15.01. Any number of persons not less than twenty (20), a majority of whom shall be bona fide residents of this State, by complying with the provisions of this chapter, may become, together with others who may hereafter be associated with them or their successors, a body corporate for the purpose of carrying on the business of mutual insurance as herein provided.

Art. 15.02. Any person proposing to form any such company shall subscribe and acknowledge articles of incorporation . . . .

Art. 15.04. Applicants for such Articles of Incorporation shall comply with and be subject to the provisions of Article 2.01 of this Code except:

1. The minimum number of persons adopting and signing such Articles of Incorporation shall be governed by Article 15.01 of this Chapter; and

2. Free surplus shall constitute capital structure within the meaning of Article 2.01.

Revisor's Note

V.T.I.C. Article 15.01 refers to the formation of a mutual insurance company by the incorporators of those companies and to "others who may hereafter be associated with them or their successors." The revised law omits the quoted language as unnecessary because, in context, it does not add to the clear meaning of the law. "Incorporators" is the term used to describe the individuals who form a company. The individuals referred to in the quoted language are not involved with the formation of the company but become members of a mutual insurance company together with the incorporation after the company has been incorporated under this chapter.

Revised Law

Sec. 883.052. ARTICLES OF INCORPORATION. Articles of incorporation of a proposed mutual insurance company must



specify:

- (1) the name of the company;
- (2) the purpose for which the company is being formed;
- (3) the location of the company's principal or home office;
- (4) the name and place of residence of each incorporator; and
- (5) the name and address of each member of the initial board of directors. (V.T.I.C. Art. 15.02 (part).)

Source Law

Art. 15.02. [Any person proposing to form any such company shall subscribe and acknowledge articles of incorporation] specifying:

- (a) The name, the purpose for which formed, and the location of its principal or home office, . . . ;
- (b) The names and addresses of those composing the board of directors . . . ;
- (c) The names of places of residence of the incorporators.

Revisor's Note

V.T.I.C. Article 15.02 refers to the "names of places of residence of the incorporators." Names "of" places of residence, in context, is clearly a typographical error. Accordingly, the revised law substitutes "name and place of residence" for "names of places of residence."

Revised Law

Sec. 883.053. COMPANY'S NAME. (a) The name of a mutual insurance company must contain the word "mutual."

(b) A mutual insurance company's name may not be so similar to the name of any other mutual insurance company organized or engaging in business in the United States, that it is confusing or misleading. (V.T.I.C. Art. 15.03.)

Source Law

Art. 15.03. No name shall be adopted by such company which does not contain the word "mutual," or which is so similar to any name already in use by any such existing corporation, company or association, organized or doing business in the United States, as to be confusing or misleading.

Revised Law

Sec. 883.054. LOCATION OF PRINCIPAL OR HOME OFFICE. The principal or home office of a mutual insurance company must be located in this state. (V.T.I.C. Art. 15.02 (part).)

Source Law

Art. 15.02. . . .

(a) . . . the location of its principal or home office which shall be within this State . . . .

Revised Law

Sec. 883.055. BEGINNING OF CORPORATE EXISTENCE. The corporate existence of a mutual insurance company begins on the date on which the commissioner issues a certificate of authority to the company. (V.T.I.C. Art. 15.05 (part).)

Source Law

Art. 15.05. The company shall have legal existence from and after the date of issuance of said certificate. . . .

Revised Law

Sec. 883.056. BOARD OF DIRECTORS. (a) The board of directors named in a mutual insurance company's articles of incorporation shall manage the company until the initial meeting of the members of the company.

(b) After a mutual insurance company is issued a certificate of authority, the company's board of directors may:

- (1) adopt bylaws;
- (2) accept applications for insurance; and
- (3) transact the business of the company. (V.T.I.C. Arts. 15.02 (part), 15.05 (part).)

Source Law

Art. 15.02. . . .

. . . .

(b) [The names and addresses of those composing the board of directors] in which management shall be vested until the first meeting of members . . . .

Art. 15.05. [The company shall have legal existence from and after the date of issuance of said certificate.] . . . The Board of Directors named in such articles may thereupon adopt by-laws, accept applications for insurance, and proceed to transact the

business of such company; provided,  
that . . . .

Revised Law

Sec. 883.057. MEMBERSHIP OF PUBLIC OR PRIVATE ENTITIES IN COMPANY AUTHORIZED. (a) Any public or private corporation, board, association, or estate may make an application for, enter into an agreement for, or hold a policy in a mutual insurance company. An officer, shareholder, trustee, or legal representative may act on behalf of the entity for that participation.

(b) An officer, shareholder, trustee, or legal representative of a public or private entity described by Subsection (a) may not be held personally liable on a contract of insurance executed by the person in the person's capacity as a representative of the entity under Subsection (a).

(c) The right of a corporation organized under the laws of this state to participate as a member of a mutual insurance company is:

(1) incidental to the purpose for which the corporation was organized; and

(2) in addition to the corporate rights or powers expressly conferred in the corporation's articles of incorporation. (V.T.I.C. Art. 15.09.)

Source Law

Art. 15.09. Any public or private corporation, board or association in this State or elsewhere may make application, enter into agreements for and hold policies in any such mutual insurance company. Any officer, stockholder, trustee or legal representative of any such corporation, board, association or estate may be recognized as acting for or on its behalf for the purpose of such membership, but shall not be personally liable upon such contract of insurance by reason of acting in such representative capacity. The right of any corporation organized under the laws of this State to participate as a member of any such mutual insurance company is hereby declared to be incidental to the purpose for which such corporation is organized and as much granted as the rights and powers expressly conferred.

Revised Law

Sec. 883.058. MEMBERSHIP VOTES. Each member of a mutual insurance company is entitled to one vote on each matter submitted to a vote unless a different number of votes is authorized by the company's bylaws based on:

- (1) the insurance in force;
- (2) the number of policies held by the member; or
- (3) the amount of the premium paid by the member.

(V.T.I.C. Art. 15.10.)

Source Law

Art. 15.10. Every member of the company shall be entitled to one vote, or to a number of votes based upon the insurance in force, the number of policies held, or the amount of premium paid, as may be provided in the by-laws.

Revisor's Note

(End of Subchapter)

V.T.I.C. Article 15.08, as amended by Chapter 117, Acts of the 54th Legislature, Regular Session, 1955, refers to renewal of a certificate of authority under V.T.I.C. Article 2.20. The revised law omits this provision as repealed. Under Section 1, V.T.I.C. Article 1.14, revised in pertinent part as Section 801.053, a certificate of authority is valid until it is suspended or revoked. Section 2, Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, amending Article 1.14, repealed "[a]ll laws and parts of laws in conflict herewith . . . to the extent that they require periodic renewal of certificates of authority." Article 2.20 was amended to remove all references to renewal of certificates of authority by Chapter 585, Acts of the 68th Legislature, Regular Session, 1983. The omitted law reads:

Art. 15.08. . . . The provisions of Article 2.20 of this Code shall apply to all renewal Certificates of Authority.

[Sections 883.059-883.100 reserved for expansion]

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS IN THIS STATE

Revised Law

Sec. 883.101. MUTUAL INSURANCE BUSINESS. Mutual insurance of any kind may not be written in this state except as authorized by this chapter or any other law. (V.T.I.C. Art. 15.20.)

Source Law

Art. 15.20. No sort of mutual insurance, other than life insurance, may be conducted in this State, except under the provisions of this law, or under some law remaining on the statutes authorizing the same.

Revisor's Note

V.T.I.C. Article 15.20 states that "[n]o sort of mutual insurance, other than life insurance" may be conducted in this state except as provided by specified law. The revised law omits the reference to "other than life insurance" as misleading because it implies that mutual life insurance may be written without complying with law. V.T.I.C. Chapter 11, revised in this code as Chapter 882, as well as other provisions of this code, apply to the writing of mutual life insurance.

Revised Law

Sec. 883.102. CHARTER AND CERTIFICATE OF AUTHORITY REQUIRED. A domestic mutual insurance company may not engage in the business of insurance until:

(1) the company obtains a charter as provided by Chapter 822; and

(2) the commissioner issues to the company a certificate of authority for that purpose. (V.T.I.C. Arts. 15.05 (part), 15.08 (part).)

Source Law

Art. 15.05. . . . no insurance shall be put into force until the company has been licensed to transact insurance as provided by this chapter.

Art. 15.08. No company organized under this Chapter shall issue policies or transact any business of insurance unless and until its charter is granted as provided in this

Code and unless and until the Board has, by issuance of Certificate of Authority, authorized it to do so. . . .

Revisor's Note

(1) V.T.I.C. Article 15.05 provides that "no insurance shall be put into force until the company has been licensed to transact insurance as provided by this chapter." The revised law omits the reference to "no insurance shall be put into force" because it is included within the meaning of "engaging in the business of insurance." Also, the revised law substitutes "authorized" for "licensed" and "certificate of authority" for "license" throughout this chapter because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

(2) V.T.I.C. Article 15.08 refers to a charter that is granted to a mutual insurance company "as provided in this code." The revised law substitutes a reference to Chapter 2, Insurance Code, revised as Chapter 822, because that is the provision of this code that contains the requirements a mutual insurance company must satisfy to obtain a charter.

(3) V.T.I.C. Article 15.08 provides that the authority of a mutual insurance company to engage in business in this state is contingent on the issuance of a charter and a certificate of authority by the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the "State Board of Insurance" have been changed to "commissioner" and "department,"

appropriately.

Revised Law

Sec. 883.103. AUTHORIZATION OF FOREIGN MUTUAL INSURANCE COMPANY TO ENGAGE IN BUSINESS. (a) The department shall authorize a foreign mutual insurance company to write the kinds of insurance authorized by the company's charter or articles of incorporation in this state if the company:

(1) is solvent as determined under this chapter;

(2) files with the department:

(A) a copy of the company's bylaws certified by the company's secretary; and

(B) a certified copy of the company's charter or articles of incorporation;

(3) appoints the commissioner as the company's agent for service of process as provided by Chapter 804;

(4) files a financial statement under oath in a form as required by the department; and

(5) complies with legal requirements applicable to the filing of documents and the furnishing of information by a stock insurance company that files an application with the department for authority to transact the same kind of insurance as the company.

(b) A foreign mutual insurance company's name may not be so similar to a name of a mutual insurance company or foreign mutual insurance company organized or authorized to engage in business in this state that it is confusing or misleading.

(c) A foreign mutual insurance company authorized to engage in the business of insurance under this section has, to the same extent, all of the powers granted to and privileges of a mutual insurance company organized and operating under this chapter. (V.T.I.C. Art. 15.14 (part).)

Source Law

Art. 15.14. [Any such mutual insurance company organized outside of this State and authorized to transact the business of insurance on the mutual plan in any state, district or territory,] shall be admitted and licensed to transact the kinds of insurance authorized by its charter or articles to the extent and with the powers and privileges specified in this chapter when it shall be solvent under this chapter, and shall have complied with the following requirements:

(a) Filed with the State Board of Insurance a copy of its by-laws certified to by its secretary;

(b) Filed with the said Board a

certified copy of its charter or articles of incorporation;

(c) Appointed the Commissioner of Insurance its agent for the service of process as provided by Article 1.36 of this code;

(d) Filed a financial statement under oath, in such form as the Board may require, and have complied with the other provisions of law applicable to the filing of papers and furnishing information by stock companies on application for authority to transact the same kind of insurance;

(e) Its name shall not be so similar to any name already in use by any such existing corporation, company or association organized or licensed in this State as to be confusing or misleading.

[Sections 883.104-883.150 reserved for expansion]

#### SUBCHAPTER D. POWERS, DUTIES, AND OPERATION OF COMPANY

##### Revised Law

Sec. 883.151. AUTHORITY TO WRITE CERTAIN INSURANCE. A domestic mutual insurance company may write any kind of insurance that may be lawfully written in this state, other than life insurance. (V.T.I.C. Art. 15.06 (part).)

##### Source Law

Art. 15.06. Any company organized under the provisions of this Chapter is empowered and authorized to write any kinds of insurance, which may lawfully be written in Texas, except life insurance. . . .

##### Revised Law

Sec. 883.152. PRIOR AUTHORITY NOT AFFECTED. This chapter does not affect any authority that existed before September 6, 1955, that allowed mutual insurance companies to write non-assessable policies in this state, subject to any prerequisite imposed by law on that authority. (V.T.I.C. Art. 15.11 (part).)

##### Source Law

Art. 15.11. . . . If up to the time of the effectiveness of this Act a mutual insurance company was authorized to write non-assessable policies in Texas under the



provisions of this Code, such mutual company shall not be denied such authority by reason of provisions which are contained herein that were not contained in this Insurance Code immediately prior to the effective date of this Act, so long as such company is complying with Article 2.20 of this Code as added by this Act.

Revisor's Note

V.T.I.C. Article 15.11 provides in relevant part that mutual insurance companies authorized to write non-assessable policies "up to the time of the effectiveness of this Act" are not denied that authority "by reason of provisions which are contained herein" that were not part of the Insurance Code "immediately prior to the effective date of this Act" if the companies are in compliance with Article 2.20 "as added by this Act."

The "Act" to which Article 15.11 refers is Chapter 117, Acts of the 54th Legislature, Regular Session, 1955, effective September 6, 1955. The reference to provisions "contained herein" refers to the requirements adopted under Article 15.11, as added by Chapter 117. Therefore, the companies are authorized to continue to write non-assessable policies, notwithstanding any conflicting requirements under Article 15.11, if the companies are in compliance with Article 2.20, as added by Chapter 117.

V.T.I.C. Article 2.20, as added by Chapter 117, imposed renewal requirements for a certificate of authority, based in part on compliance with certain minimum capital and surplus requirements. The requirement that a certificate of authority be renewed was repealed by Section 2, Chapter 194, Acts of the 56th Legislature, Regular Session, 1959. The minimum capital and surplus requirements imposed under Article 2.20 have been amended significantly several times since 1955.

It is unclear whether any mutual insurance company that was writing non-assessable policies in 1955 still exists. To the extent that V.T.I.C. Article 15.11 authorizes the continued writing of

non-assessable policies by those companies,  
the revised law preserves that authority.

Revised Law

Sec. 883.153. POLICY RATES. A mutual insurance company operating under this chapter shall charge the insurance rates prescribed by the commissioner and is subject to the same rate requirements as a domestic insurance company. (V.T.I.C. Art. 15.06 (part).)

Source Law

Art. 15.06. . . . Mutual insurance companies operating under the provisions of this Chapter shall be required to charge the rates prescribed by the Board of Insurance Commissioners and be subject to the same rates and [reserve] supervision that domestic insurance companies are subject to by law.

Revised Law

Sec. 883.154. MAXIMUM PREMIUMS. (a) The maximum premium of an insurance policy issued by a domestic mutual insurance company must be stated in the policy.

(b) A policy's maximum premium may consist only of:

- (1) a cash premium; or
- (2) a cash premium and a contingent premium in an amount equal to one additional cash premium. (V.T.I.C. Art. 15.11 (part).)

Source Law

Art. 15.11. The maximum premium shall be expressed in the policy of a mutual company organized under this Chapter, and it may be solely a cash premium or a cash premium and an additional contingent premium, which contingent premium shall be equal in amount to one (1) additional cash premium, but  
. . . .

Revised Law

Sec. 883.155. ISSUANCE OF POLICY FOR CASH PREMIUM ONLY. (a) A domestic mutual insurance company may not issue an insurance policy for a cash premium only unless:

- (1) the company possesses surplus above all liabilities in an amount at least equal to the minimum capital and surplus required of a stock insurance company engaging in the same kinds of insurance;
- (2) the company files with the department:

(A) an application for the issuance of this type of policy; and

(B) a certified copy of the resolution of the company's board of directors authorizing the issuance; and

(3) the commissioner approves the documents filed under Subdivision (2).

(b) A mutual insurance company that issues a policy for a cash premium only may waive all contingent premiums in any outstanding policies.

(c) A foreign mutual insurance company authorized to engage in the business of insurance in this state may issue an insurance policy for a cash premium only and may waive contingent premiums on any of its outstanding policies in the same manner and subject to the same requirements as a mutual insurance company under this section that is engaged in the same kinds of insurance.

(V.T.I.C. Art. 15.11 (part).)

Source Law

Art. 15.11. . . . no such company shall issue an insurance policy for a cash premium and without an additional contingent premium until and unless it possesses a surplus above all liabilities of a sum at least equal to the minimum capital and surplus required of a stock insurance company transacting the same kinds of business.

When any company shall issue policies for cash premiums only, in pursuance of the authority of this Article, it may waive all contingent premiums set forth in policies then outstanding. The issuance of policies for cash premiums only in pursuance of this Article may not be exercised by any such company until written notice of its intention so to do accompanied by a certified copy of the resolution of the Board of Directors providing for the issuance of such policies shall have been filed with and approved by the Board. . . .

A foreign mutual insurance company authorized to do business in Texas may issue an insurance policy for a cash premium and without an additional contingent premium and may waive contingent premiums on outstanding policies under the same conditions and subject to the same restrictions and provisions as a mutual insurance company organized under this Code and doing the same

kinds of business. . . .

Revised Law

Sec. 883.156. ASSESSMENT ON POLICYHOLDERS. (a) A policyholder is not liable for an assessment imposed on a policy issued by a mutual insurance company with approval of the commissioner under Section 883.155(a).

(b) An assessment may not be imposed on the holder of a policy described by Section 883.155(a) by:

(1) the officers or directors of a mutual insurance company;

(2) the department;

(3) a receiver; or

(4) a liquidator. (V.T.I.C. Art. 15.11 (part).)

Source Law

Art. 15.11. . . . Policyholders of a mutual insurer shall at no time be liable for assessment on policies issued at a time when such approval by the Board is in effect. Neither the officers nor directors of any such mutual insurer, the Board of Insurance Commissioners, nor any receiver or liquidator shall have authority to levy assessments upon the holders of such policies. . . .

Revised Law

Sec. 883.157. REINSURANCE OF POLICY. (a) Subject to Subsection (c), a mutual insurance company authorized to engage in the business of insurance in this state may enter into an agreement with an insurer to cede to or accept from the insurer all or part of an insurance risk.

(b) A reinsurance agreement under this section does not create or confer contingent liability, participation, or membership unless otherwise provided by the agreement.

(c) A mutual insurance company may not enter into an agreement with a reinsurer that has been disapproved for that purpose by written order of the commissioner filed in the department's offices. (V.T.I.C. Art. 15.17.)

Source Law

Art. 15.17. Any such mutual insurance company organized or admitted to transact insurance in this State may by policy, treaty or other agreement cede to or accept from any insurance company or insurer reinsurance upon the whole or any part of any risk which reinsurance shall be without contingent

liability or participation or membership unless the contract provides otherwise and shall not be effected with any company or insurer disapproved therefor by written order of the Board of Insurance Commissioners filed in its office.

Revisor's Note

(1) V.T.I.C. Article 15.17 refers to a "policy, treaty or other agreement" and a "contract." The revised law substitutes "agreement" for the quoted term and language because a "policy," "treaty," and "contract" are all types of agreements.

(2) V.T.I.C. Article 15.17 refers to an "insurance company or insurer." The revised law omits the reference to "insurance company" because "insurance company" is included within the meaning of "insurer."

Revised Law

Sec. 883.158. REQUIREMENTS FOR COMPANIES WRITING BONDS. A mutual insurance company qualifying to write bonds under this chapter is subject to the same legal requirements as any other insurance company writing bonds under this chapter. (V.T.I.C. Art. 15.07.)

Source Law

Art. 15.07. Any mutual insurance company qualifying to write bonds under this chapter shall meet the same legal requirements as all other insurance companies who are writing bonds under this chapter.

Revisor's Note

V.T.I.C. Article 15.07 provides that a mutual insurance company qualifying to write bonds under this chapter must meet the same legal requirements as "other insurance companies" who are writing bonds under this "chapter." Because Chapter 15, Insurance Code, only applies to mutual insurance companies other than life, the legislature probably intended to refer to the legal requirements of other insurance companies writing bonds under this "code" or another specific provision of this code. A review of the legislative history of V.T.I.C. Article 15.07 offers no insight in clarifying the

legislature's intent. Consequently, the revised law is drafted in a manner that preserves the ambiguity of the source law.

Revised Law

Sec. 883.159. NECESSARY OR INCIDENTAL POWERS. A domestic mutual insurance company has such powers as are necessary or incidental to the transaction of its business. (V.T.I.C. Art. 15.05 (part).)

Source Law

Art. 15.05. . . . The company shall have such powers as are necessary or incident to the transaction of its business. . . .

Revised Law

Sec. 883.160. RIGHTS AND PRIVILEGES OF CERTAIN COMPANIES RETAINED. A mutual insurance company engaged in business under Chapters 5, 9, 12, 13, 14, and 15, Title 78, Revised Statutes, before their repeal by Section 18, Chapter 40, Acts of the 41st Legislature, 1st Called Session, 1929, as amended by Section 1, Chapter 60, Acts of the 41st Legislature, 2nd Called Session, 1929, retains the rights and privileges under the repealed law to the extent provided by those sections. (V.T.I.C. Art. 15.19.)

Source Law

Art. 15.19. Rights and privileges of companies affected by the repeal of Chapters 5, 9, 12, 13, 14 and 15 of Title 78 of the Revised Civil Statutes of 1925, shall remain in effect to the extent set out in the Acts 1929, 41st Legislature, 1st Called Session, page 90, Chapter 40, Section 18 as amended Acts 1929, 41st Legislature, 2nd Called Session, page 99, Chapter 60, Section 1.

Revised Law

Sec. 883.161. DIVIDENDS. On advance approval of the commissioner, a mutual insurance company may pay dividends to its members. (V.T.I.C. Art. 15.05-A (part).)

Source Law

Art. 15.05-A. . . . any such mutual insurance company may upon advance approval of the Commissioner of Insurance pay dividends to its members, and . . . .

Revised Law

Sec. 883.162. LOANS TO COMPANY. (a) A person, including a

director, officer, or member of a mutual insurance company, may loan to the company money necessary:

- (1) for the company to engage in the company's business; or
- (2) to enable the company to comply with a legal requirement.

(b) The mutual insurance company may repay a loan and agreed interest, at an annual rate not to exceed 20 percent, only from the surplus remaining after the company provides for the company's reserves, other liabilities, and required surplus.

(c) A loan under this section or interest on a loan is not otherwise a liability or claim against the company or any of its assets.

(d) A mutual insurance company may not pay a commission or promotion expense in connection with a loan made to the company.

(e) A mutual insurance company shall report in its annual statement the amount of each loan made to the company. (V.T.I.C. Art. 15.12.)

#### Source Law

Art. 15.12. Any director, officer or member of such company, or any other person, may advance to such company, any sum or sums of money necessary for the purpose of its business or to enable it to comply with any requirements of the law and such moneys and interest thereon as may have been agreed upon, not exceeding twenty (20%) per cent per annum shall be payable only out of the surplus remaining after providing for all reserve, other liabilities and lawful surplus, and shall not otherwise be a liability or claim against the company or any of its assets. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company, and the amount of such advances shall be reported in each annual statement.

#### Revised Law

Sec. 883.163. IMMEDIATE NOTIFICATION WHEN ASSETS ARE INSUFFICIENT; EXAMINATION. The president and the secretary of a mutual insurance company operating under the law providing for the incorporation of mutual fire, lightning, hail, and storm insurance companies shall immediately notify the commissioner any time the admitted assets of the company are less than the largest single risk for which the company is liable. The commissioner may make an examination into the affairs of the company as the

commissioner considers best. (V.T.I.C. Art. 15.19-1 (part).)

Source Law

Art. 15.19-1. If at any time the admitted assets of any mutual company operating under the law providing for the incorporation of mutual fire, lightning, hail and storm insurance companies, shall come to be less than the largest single risk for which the company is liable, then the president and the secretary of the company shall at once notify the Commissioner of Insurance, and he may make an examination into the company's affairs if he deems best, and . . . .

[Sections 883.164-883.200 reserved for expansion]

SUBCHAPTER E. REGULATION OF COMPANY

Revised Law

Sec. 883.201. SURPLUS REQUIREMENTS. A domestic mutual insurance company must possess a surplus over and above all liabilities in an amount equal to the minimum capital stock and surplus required of a stock insurance company engaged in the same kinds of insurance. (V.T.I.C. Art. 15.06 (part).)

Source Law

Art. 15.06. . . . Any such company shall be possessed of a surplus over and above all of its liabilities equal to the minimum capital stock and surplus required of a stock insurance company transacting the same kinds of business. . . .

Revised Law

Sec. 883.202. REQUIRED DEPOSIT FOR COMPANIES WRITING BONDS.  
(a) A domestic mutual insurance company that writes fidelity and surety bond coverage shall maintain on deposit with the comptroller cash or securities of the kind described by Article 2.10 in an amount equal to the amount of cash or securities required of a domestic stock insurance company.

(b) The commissioner must approve for deposit the cash or securities required by this section. (V.T.I.C. Art. 15.06 (part).)

Source Law

Art. 15.06. . . . Any such company writing fidelity and surety bonds shall keep



on deposit with the comptroller cash or securities as provided in Article 2.10 approved by the Board equal in amount to that required of domestic stock companies. . . .

Revised Law

Sec. 883.203. RESERVES. (a) A domestic mutual insurance company shall maintain unearned premiums and other reserves separately for each kind of insurance. The reserves must be maintained on the same basis as those reserves are required to be maintained by a domestic stock insurance company engaging in the same kinds of insurance.

(b) A mutual insurance company operating under this chapter is subject to the same reserve requirements as a domestic insurance company under law. (V.T.I.C. Arts. 15.06 (part), 15.13.)

Source Law

Art. 15.06. . . . Mutual insurance companies operating under the provisions of this Chapter shall . . . be subject to the same . . . reserve supervision that domestic insurance companies are subject to by law.

Art. 15.13. Such company shall maintain unearned premium and other reserves separately for each kind of insurance, upon the same basis as that required of domestic stock insurance companies transacting the same kind of insurance.

Revised Law

Sec. 883.204. ANNUAL REPORT. (a) Domestic and foreign mutual insurance companies organized or operating under this chapter shall submit to the commissioner an annual report in the form required by the commissioner.

(b) To the extent practicable, the commissioner shall adopt a form that is similar to a form that is generally used for submission of the annual report throughout the United States. (V.T.I.C. Art. 15.15 (part).)

Source Law

Art. 15.15. Every such mutual insurance company, whether organized within or without the state . . . shall make its annual report in such form and . . . as may be required by the Board. As far as practicable . . . the forms of annual report shall be such as are

in general use throughout the United States.

Revised Law

Sec. 883.205. EXAMINATION OF FOREIGN MUTUAL INSURANCE COMPANY. To the extent practicable, an examination of a foreign mutual insurance company must be conducted in cooperation with the insurance departments of other states in which the foreign company is authorized to transact business. (V.T.I.C. Art. 15.15 (part).)

Source Law

Art. 15.15. . . . As far as practicable such examinations of mutual insurance companies organized outside of this State shall be made in cooperation with the insurance departments of other states and . . . .

Revisor's Note

V.T.I.C. Article 15.15 permits the commissioner of insurance to examine domestic and foreign mutual insurance companies. The revised law omits this provision for the reason stated in the revisor's note to Section 883.163. The omitted law reads:

Art. 15.15. Every such mutual insurance company, whether organized within or without the state . . . shall . . . submit to such examination and furnish such information as may be required by the Board. . . .

Revised Law

Sec. 883.206. FEES. Each domestic or foreign mutual insurance company organized or operating under this chapter is subject to a fee imposed by law on a stock insurance company engaging in the same kinds of insurance. (V.T.I.C. Art. 15.18 (part).)

Source Law

Art. 15.18. Every such company, whether organized within or without this State shall be subject to such fees as are now provided by law for stock companies doing the same kind of business and . . . .

Revised Law

Sec. 883.207. PREMIUM TAX. Each domestic or foreign mutual insurance company organized or operating under this chapter is

subject to taxes imposed by law on that company. The company shall pay the tax on the gross premiums received for direct insurance written on property or risks located in this state. The tax payable must be computed on the portion of the gross premiums remaining after deducting:

- (1) premiums charged on policies not taken;
- (2) premiums returned on canceled policies; and
- (3) any refund or other return made to the policyholders other than for the incurrence of a loss. (V.T.I.C. Art. 15.18 (part).)

#### Source Law

Art. 15.18. [Every such company, whether organized within or without this State shall be subject] . . . to such taxes as may be provided by law for such mutual companies. The tax shall be paid upon the gross premiums received for direct insurance upon property or risks located in this State, deducting premiums upon policies not taken, premiums returned on cancelled policies and any refund or return made to the policyholders other than for losses.

[Sections 883.208-883.700 reserved for expansion]

### SUBCHAPTER O. CRIMINAL PENALTIES

#### Revised Law

Sec. 883.701. VIOLATION OF CHAPTER. (a) Except as otherwise provided by this subchapter, a person or corporation commits an offense if the person or corporation violates this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$500. (V.T.I.C. Art. 15.21.)

#### Source Law

Art. 15.21. Any person or corporation violating the provisions of this Act shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Fifty (\$50.00) Dollars nor more than Five Hundred (\$500.00) Dollars.

#### Revised Law

Sec. 883.702. FAILURE TO REPORT CONDITION. (a) A person commits an offense if the person is a president or secretary described by Section 883.163 and the person fails to make the

report required by that section.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 or more than \$500. (V.T.I.C. Art. 15.19-1 (part).)

Source Law

Art. 15.19-1. . . . if such president and secretary shall fail to report the company's condition as so required, they shall each be fined not less than one hundred nor more than five hundred dollars.

Revisor's Note

V.T.I.C. Article 15.19-1 states that a person who violates that article is punishable by a fine not to exceed \$500. The revised law adds a statement that the punishment imposed under that article is an "offense" because the article was transferred from Vernon's Annotated Penal Code Article 601 by authority of Chapter 399, Acts of the 63rd Legislature, Regular Session, 1973, which enacted the Texas Penal Code. A criminal penalty is described as an "offense" by the Penal Code. The revised law also adds that the offense is a "misdemeanor" to conform to the way offenses punishable by a fine are described by the Penal Code.

Revised Law

Sec. 883.703. FALSE STATEMENT OR MISAPPROPRIATION. (a) A person commits an offense if the person intentionally submits a false statement or misappropriates the funds of a mutual insurance company organized under the laws providing for the incorporation of mutual fire, lightning, hail, and storm insurance companies.

(b) An offense under this section is a felony punishable by confinement in the institutional division of the Texas Department of Criminal Justice for not less than 5 years or more than 10 years. (V.T.I.C. Art. 15.19-2.)

Source Law

Art. 15.19-2. Whoever shall intentionally submit a false statement, or intentionally misappropriate the funds of mutual companies organized under the laws providing for the incorporation of mutual fire, lightning, hail and storm insurance companies, shall be confined in the

penitentiary not less than five nor more than ten years.

Revisor's Note

(1) V.T.I.C. Article 15.19-2 refers to a "penitentiary." The revised law substitutes "institutional division of the Texas Department of Criminal Justice" for "penitentiary" to conform to the changes in law made by Chapter 785, Acts of the 71st Legislature, Regular Session, 1989, which transferred to that division the powers and duties that were previously those of the Texas Department of Corrections, the state agency with jurisdiction over penitentiaries in this state.

(2) V.T.I.C. Article 15.19-2 states that a person who violates that article is punishable by confinement. The revised law adds a statement that the punishment imposed under that article is an "offense" and that the offense is a "felony" to conform to the way offenses punishable by confinement are described by the Penal Code.

Revised Law

Sec. 883.704. UNAUTHORIZED MUTUAL FIRE INSURANCE. (a) A person commits an offense if the person engages in the business of mutual fire insurance in this state in violation of the laws regulating mutual fire insurance.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$500. (V.T.I.C. Art. 15.20-1.)

Source Law

Art. 15.20-1. Any person who shall transact the business of mutual fire insurance in this State without complying with the laws regulating such business shall be fined not less than fifty nor more than five hundred dollars.

Revisor's Note

V.T.I.C. Article 15.20-1 states that a person who violates that article is punishable by a fine not to exceed \$500. The revised law adds a statement that the punishment imposed under that article is an "offense" and adds a reference to

"misdemeanor" for the reasons stated in the  
revisor's note to Section 883.702.

CHAPTER 884. STIPULATED PREMIUM INSURANCE COMPANIES

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CHAPTER 884. STIPULATED PREMIUM INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 884.001. DEFINITION. In this chapter, "stipulated premium company" means a:

- (1) stipulated premium life insurance company;
- (2) stipulated premium accident insurance company;
- (3) stipulated premium life and accident insurance company;
- (4) stipulated premium accident and health insurance company; or
- (5) stipulated premium life, accident, and health insurance company. (V.T.I.C. Art. 22.01, Sec. 1 (part).)

Source Law

Art. 22.01

Sec. 1. . . . [citizens of this state may associate themselves for the purpose of forming] a stipulated premium life insurance company or a stipulated premium accident insurance company or a stipulated premium life and accident, health and accident, or life, health and accident insurance company.

Revised Law

Sec. 884.002. APPLICABILITY OF OTHER LAW TO COMPANY. (a) Except as expressly provided by this code, a provision of this code, other than this chapter, does not apply to a stipulated premium company organized under this chapter.

(b) A law enacted after August 28, 1961, does not apply to a stipulated premium company unless stipulated premium companies are expressly designated in the law.

(c) The following provisions of this code apply to a stipulated premium company:

- (1) Article 1.15;
- (2) Article 1.15A;
- (3) Article 1.16;
- (4) Article 1.19;
- (5) Article 1.32;
- (6) Article 3.10;
- (7) Article 3.39;
- (8) Article 3.40;
- (9) Article 21.07-7;
- (10) Article 21.21;
- (11) Article 21.28;

- (12) Article 21.32;
- (13) Article 21.39;
- (14) Article 21.47;
- (15) Section 38.001;
- (16) Sections 801.001-801.002;
- (17) Sections 801.051-801.055;
- (18) Section 801.057;
- (19) Sections 801.101-801.102;
- (20) Subchapter A, Chapter 821;
- (21) Chapter 824;
- (22) Chapter 828;
- (23) Section 841.251;
- (24) Section 841.259;
- (25) Section 841.261; and
- (26) Section 841.703.

(d) The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) applies to a stipulated premium company.

(e) The Texas Business Corporation Act applies to a stipulated premium company to the extent that law is not inconsistent with an insurance law applicable to a stipulated premium company. The department shall perform a duty imposed by the Texas Business Corporation Act on the office of the secretary of state that is applicable to a stipulated premium company. (V.T.I.C. Art. 22.01, Sec. 2 (part); Art. 22.16; Art. 22.18, Secs. 1, 2.)

#### Source Law

[Art. 22.01]

Sec. 2. . . . no other insurance law of this state shall apply to any corporation chartered under this Chapter and no law hereafter enacted shall apply to stipulated premium companies unless they be expressly designated therein.

Art. 22.16. The Texas Business Corporation Act applies to and governs stipulated premium companies to the extent that that Act is not inconsistent with or contrary to this chapter or any other insurance law applicable to stipulated premium companies. A duty imposed by the Texas Business Corporation Act on the office of the secretary of state shall be performed by the department for the purposes of this chapter.

Art. 22.18

Sec. 1. The following Articles of this Code: Article 1.14, Article 1.15, Article 1.15A, Article 1.16, Article 1.19, Article 1.24, Article 1.32, Article 3.10, Article 3.13, Article 3.39, Article 3.40, Article 3.61, Article 3.63, Article 3.67, Article 21.07-7, Article 21.21, Article 21.25, Article 21.26, Article 21.28, Article 21.32, Article 21.39, Article 21.45, and Article 21.47, shall apply to and govern stipulated premium companies and each company shall comply with the provisions thereof.

Sec. 2. Stipulated premium companies shall be regulated by the Texas Securities Act, same being Acts 1957, 55th Legislature, pages 575 et seq., Chapter 269, and shall pay premium taxes in like manner, as a company chartered and doing business under the provisions of Chapter 3 of this Code.

Revisor's Note

(1) Section 2, V.T.I.C. Article 22.01, refers to a law "hereafter enacted." That provision of Section 2 was a part of the original enactment of Chapter 22, enacted by Chapter 180, Acts of the 57th Legislature, Regular Session, 1961, which took effect August 28, 1961. The revised law substitutes that date for the quoted language.

(2) Section 2, V.T.I.C. Article 22.18, provides that a stipulated premium company "shall pay premium taxes in like manner, as a company chartered and doing business under the provisions of Chapter 3 of this Code." Premium taxes for life, health, and accident carriers are governed by V.T.I.C. Article 4.11. Article 4.11 applies to a stipulated premium company by its terms, so the quoted phrase is omitted from the revised law as unnecessary.

Revised Law

Sec. 884.003. ADMITTED ASSETS. A stipulated premium insurer may include among its admitted assets a net asset under Section 841.004. (V.T.I.C. Art. 3.01, Sec. 10(d) (part).)

Source Law

(d) . . . stipulated premium companies, may include among their admitted

assets any asset herein designated as "net assets" . . . .

Revisor's Note

Section 10(d), V.T.I.C. Article 3.01, provides that a stipulated premium company may include certain net assets as an admitted asset. For the convenience of the reader, the revised law includes a reference to Section 841.004, which revises the portion of Section 10 that describes the net assets.

Revisor's Note

(End of Subchapter)

Section 2, V.T.I.C. Article 22.01, provides that Chapter 22, Insurance Code, applies to a stipulated premium company unless otherwise expressly provided by the Insurance Code. The revised law omits the provision because this chapter clearly applies by its own terms and the provision adds nothing. Currently, an exception to the application of Chapter 22 to a stipulated premium company does not exist. If the legislature enacts such an exception in the future, it will control by its own terms even without an expressed provision in this chapter of the revised law. The omitted provision reads:

Sec. 2. Every stipulated premium company incorporated or transacting business in this state shall be subject to the provisions of this Chapter 22, unless otherwise expressly provided by this Code and . . . .

[Sections 884.004-884.050 reserved for expansion]

SUBCHAPTER B. FORMATION AND STRUCTURE OF  
STIPULATED PREMIUM INSURANCE COMPANY

Revised Law

Sec. 884.051. FORMATION OF COMPANY. (a) Five or more, but not more than 35, residents of this state may form a stipulated premium company.

(b) To form a stipulated premium company:

(1) each incorporator must sign and acknowledge the articles of incorporation of the company; and

(2) the incorporators must file the articles of incorporation with the department. (V.T.I.C. Art. 22.01, Sec. 1

(part).)

Source Law

Art. 22.01

Sec. 1. Any five (5) or more, but not to exceed thirty-five (35), citizens of this state may associate themselves for the purpose of forming a stipulated premium life insurance company or a stipulated premium accident insurance company or a stipulated premium life and accident, health and accident, or life, health and accident insurance company. In order to form such a company, the incorporators shall sign and acknowledge its articles of incorporation and file the same in the office of the State Board of Insurance. . . .

Revisor's Note

(1) Section 1, V.T.I.C. Article 22.01, refers to "citizens of this state." The revised law substitutes "resident" for "citizen" because, in the context of this section, "citizen" and "resident" are synonymous and "resident" is more commonly used.

(2) Section 1, V.T.I.C. Article 22.01, refers to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the board and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the State Board of Insurance have been changed appropriately.

Revised Law

Sec. 884.052. ARTICLES OF INCORPORATION. (a) Articles of incorporation of a stipulated premium company must specify:

(1) the name and place of residence of each incorporator;

(2) the name of the proposed stipulated premium company;

(3) the location of the proposed company's home office;

(4) the kinds of insurance business the proposed company will transact;

(5) the amount of the proposed company's capital stock;

(6) the number of shares of the proposed company's capital stock; and

(7) the period of the proposed company's duration, which may not exceed 500 years.

(b) The incorporators of a stipulated premium company may include other provisions in the articles of incorporation.

(V.T.I.C. Art. 22.01, Sec. 1 (part).)

Source Law

Sec. 1. . . . Such articles shall specify:

1. The name and place of residence of each of the incorporators;

2. The name of the proposed company, . . .

3. The location of its home office;

4. The kind or kinds of insurance business it proposes to transact;

5. The amount of its capital stock, . . .

6. The period of time it is to exist, which shall not exceed five hundred (500) years;

7. The number of shares of such capital stock;

8. Such other provisions not inconsistent with the law as the incorporators may deem proper to insert therein.

Revisor's Note

Section 1(8), V.T.I.C. Article 22.01, states that the articles shall specify "other provisions not inconsistent with the law . . . ." The revised law omits "not inconsistent with the law" as unnecessary. The incorporators of a stipulated premium company may not include provisions that violate law in the articles of incorporation of the company.

Revised Law

Sec. 884.053. COMPANY'S NAME. (a) The name of a stipulated

premium company must contain the words "Insurance Company."

(b) A stipulated premium company's name may not be so similar to the name of another insurance company as to likely mislead the public. (V.T.I.C. Art. 22.01, Sec. 1 (part).)

Source Law

Sec. 1. . . . Such articles shall specify:

. . . .

2. The name of the proposed company, which shall contain the words "Insurance Company" as a part thereof, and the name selected shall not be so similar to the name of any other insurance company as to be likely to mislead the public;

. . . .

Revised Law

Sec. 884.054. CAPITAL STOCK AND SURPLUS REQUIREMENTS. (a) A proposed stipulated premium company's capital stock must be in an amount of at least \$15,000.

(b) All of the capital stock required by Subsection (a) must be fully subscribed and paid up and delivered to the incorporators before the articles of incorporation are filed.

(c) To be incorporated, a stipulated premium company must possess at the time of incorporation, in addition to its capital, surplus in an amount of at least \$7,500. The amount of the surplus is not required to be stated in the company's articles of incorporation.

(d) At the time of incorporation the minimum capital and surplus shall consist only of:

(1) United States currency;

(2) bonds of the United States, this state, or a county or municipality of this state; or

(3) government insured mortgage loans that are authorized by this chapter, with not more than 50 percent of the minimum capital invested in first mortgage real property loans. (V.T.I.C. Art. 22.01, Sec. 1 (part).)

Source Law

Sec. 1. . . . Such articles shall specify:

. . . .

5. The amount of its capital stock, not less than Fifteen Thousand Dollars (\$15,000.00); all of which capital stock must be fully subscribed and paid up and in the hands of the corporators before said

articles of incorporation are filed. Such stipulated premium insurance company shall not be incorporated unless at the time of incorporation such company is possessed of at least Seven Thousand Five Hundred Dollars (\$7,500.00) surplus, in addition to its capital; provided the amount of such surplus need not be stated in its articles of incorporation. Such minimum capital and surplus shall, at the time of incorporation, consist only of lawful money of the United States or bonds of the United States or of this state or of any county or incorporated municipality thereof, or government insured mortgage loans which are otherwise authorized by this chapter; and shall not include any real estate; provided, however, fifty per cent (50%) of the minimum capital may be invested in first mortgage real estate loans. . . .

Revisor's Note

(1) Section 1, V.T.I.C. Article 22.01, refers to an "incorporated municipality" of this state. The revised law omits "incorporated" because under the Local Government Code all municipalities must be incorporated.

(2) Section 1, V.T.I.C. Article 22.01, provides that the minimum capital and surplus "shall not include any real estate." The revised law omits the quoted phrase as unnecessary because the revised law expressly sets out all of the forms that capital and surplus may take, which does not include real property.

Revised Law

Sec. 884.055. SHARES OF STOCK. (a) The shares of stock of a stipulated premium company must have a par value of not less than \$1 or more than \$100.

(b) A stipulated premium company may issue and dispose of authorized shares for money or an instrument authorized for minimum capital under Section 884.054(d). After the company receives payment for a share of stock, the share is nonassessable.

(c) If all of the shares of stock authorized by the charter or an amendment to the charter are not subscribed and paid for when the charter is granted or the amendment is filed,



respectively, the stipulated premium company shall file with the department a certificate authenticated by a majority of the directors stating the number of shares issued and the consideration received for those shares. The company shall file the certificate not later than the 90th day after the date of issuance of any of those remaining shares. (V.T.I.C. Art. 22.02.)

#### Source Law

Art. 22.02. The stock of any stipulated premium company shall be of par value. Each share shall be for not less than One Dollar (\$1.00) nor more than One Hundred Dollars (\$100.00). Such stipulated premium companies may issue and dispose of their authorized shares having a par value for money or those notes, bonds and mortgages, of which Art. 22.01 of this Chapter authorizes for minimum capital and such shares shall thereafter be nonassessable. In the event all of the shares of stock, authorized by the original charter or any amendment, are not subscribed and paid for at the time the original charter is granted, or the amendment is filed, then when such remaining shares of stock are sold and issued, the company shall file with the State Board of Insurance, within ninety (90) days after the issuance of such shares, a certificate authenticated by a majority of the directors setting forth the number of shares so issued and the actual consideration received by the company for such shares.

#### Revisor's Note

(1) V.T.I.C. Article 22.02 refers to "those notes, bonds and mortgages, of which Art. 22.01 of this Chapter authorizes for minimum capital." The relevant portion of Article 22.01 is revised as Section 884.054. Subsection (d) of that section lists the authorized forms that capital may take. The revised law refers to that provision.

(2) V.T.I.C. Article 22.02 refers to "actual" consideration. The revised law omits "actual" because it is unnecessary. While consideration may take many forms, to be consideration a thing must be "actual"

consideration.

Revised Law

Sec. 884.056. APPLICATION FOR CHARTER. (a) To obtain a charter for a stipulated premium company under this chapter, the incorporators must pay a charter fee in an amount determined under Article 4.07 and file with the department:

- (1) an application for charter on the form and containing the information prescribed by the department;
- (2) the company's articles of incorporation; and
- (3) an affidavit made by two or more of the incorporators that states that:

(A) the minimum capital and surplus requirements of Section 884.054 are satisfied;

(B) the capital and surplus is the bona fide property of the company; and

(C) the information in the application and articles of incorporation is true and correct.

(b) The department may require that the incorporators provide at their expense additional evidence of a matter required in the affidavit before the department takes further action on the application for the charter. (V.T.I.C. Art. 22.03, Sec. 1.)

Source Law

Art. 22.03

Sec. 1. As a condition precedent to the granting of a charter of any such company, the incorporators shall file with the State Board of Insurance the following:

1. An application for charter on such form and including therein such information as may be prescribed by the Board;

2. The articles of incorporation as provided in this Code;

3. An affidavit made by two (2) or more of its incorporators that all of the stock has been subscribed in good faith and fully paid for, as required by law, in the amount of not less than Fifteen Thousand Dollars (\$15,000.00) capital and that such company is possessed of at least Seven Thousand Five Hundred Dollars (\$7,500.00) surplus, as required by law, in addition to its capital, which affidavit shall state that the facts set forth in the application and the articles of incorporation are true and correct and that the capital and surplus is the bona fide property of such company. The State Board of Insurance may, in its discretion, at the expense of the incorporators, require other and additional satisfactory evidence of the matters required to be set forth in said affidavit before it shall be required to file the articles of incorporation, application for charter or follow the procedure hereinafter set forth;

4. A charter fee as prescribed by law.

Revisor's Note

Section 1, V.T.I.C. Article 22.03, provides that a stipulated premium company must deposit with the Texas Department of Insurance "[a] charter fee as prescribed by law" when it files an application to obtain a charter. V.T.I.C. Article 4.07 is a comprehensive fee provision that authorizes the Texas Department of Insurance to set the amounts of various fees, including a charter fee. Section D, Article 4.07, provides that Article 4.07 applies to stipulated premium companies. Accordingly, the revised law substitutes a general reference to a fee in the amount determined under V.T.I.C. Article 4.07.

Revised Law

Sec. 884.057. ACTION BY COMMISSIONER AND DEPARTMENT AFTER FILING. (a) After the charter fee is paid and all items required for a charter under Section 884.056 are filed with the department:

(1) the commissioner may set a date for a hearing on the application; and

(2) the department shall make or cause to be made a full and thorough examination of the company before a hearing.

(b) The stipulated premium company shall pay for the examination required under Subsection (a)(2). (V.T.I.C. Art. 22.03, Sec. 2 (part); Art. 22.05 (part).)

Source Law

[Art. 22.03]

Sec. 2. When such application for charter, articles of incorporation, affidavit, and charter fee are filed with the State Board of Insurance, the Board may set a date for a public hearing of the same, . . . .

Art. 22.05. When the application for charter, articles of incorporation, affidavit, and charter fee are filed with the State Board of Insurance and before the hearing required by Article 22.03 of this Code, the Board shall make or cause to be made at the expense of the company a full and thorough examination thereof. . . .

Revisor's Note

Section 2, V.T.I.C. Article 22.03, refers to a "public hearing" of the former State Board of Insurance. Throughout this chapter, the revised law omits "public" as unnecessary. In context, "hearing" means a hearing open to the public.

Revised Law

Sec. 884.058. APPLICATION PROCESS. (a) The date for a hearing on an application may not be before the 11th or later

than the 30th day after the date notice is provided under Subsection (b).

(b) The commissioner shall:

(1) provide written notice of the date of a hearing to:

(A) the person or persons who filed the application; and

(B) any interested party, including any other party who had previously requested a copy of the notice; and

(2) publish, at the expense of the incorporators, a copy of the notice in a newspaper of general circulation in the county in which the stipulated premium company's home office is proposed to be located.

(c) The department shall make a record of the proceedings of a hearing under this section.

(d) An interested party is entitled to oppose or support the granting or denial of the application and may intervene and participate fully and in all respects in any hearing or other proceeding on the application. An intervenor has the rights and privileges of a proper or necessary party in a civil suit in the courts of this state, including the right to be represented by counsel. (V.T.I.C. Art. 22.03, Sec. 2 (part).)

#### Source Law

Sec. 2. . . . [the Board may set a date for a public hearing of the same,] which date shall be not less than ten (10) nor more than thirty (30) days after the date of notice thereof. The Board shall notify in writing the person or persons submitting such application of the date for such hearing and shall furnish a copy of such notice to all interested parties, including any parties who have theretofore requested a copy of such notice. The Board shall, at the expense of the incorporators, publish a copy of such notice in any newspaper of general circulation in the county of the proposed home office of said company. In all such public hearings on such applications, a record shall be made of such proceedings, . . . . Any interested party shall have the right to oppose or support the granting or denial of such application and may intervene and participate fully and in all respects in any hearing or other proceeding had on any such application. Any such intervenor shall have and enjoy all the rights and privileges of a proper or necessary party in a civil suit in the courts of this state, including the right to be represented by counsel.

#### Revised Law

Sec. 884.059. ACTION ON APPLICATION. (a) In considering the application, the commissioner, not later than the 30th day after the date on which a hearing under Section 884.058 is

completed, shall determine if:

(1) the minimum capital and surplus required by Section 884.054 are the bona fide property of the stipulated premium company;

(2) the proposed officers, directors, and managing executives of the company have sufficient insurance experience, ability, and standing to make success of the proposed company probable; and

(3) the applicants are acting in good faith.

(b) If the commissioner determines by an affirmative finding any of the issues under Subsection (a) adversely to the applicants, the commissioner shall reject the application in writing, giving the reason for the rejection. An application may not be granted unless it is adequately supported by competent evidence.

(c) If the commissioner does not reject the application under Subsection (b), the commissioner shall approve the application and on receipt of a fee in the amount determined under Article 4.07 shall provide to the incorporators a certified copy of the application, articles of incorporation, and submitted affidavit. (V.T.I.C. Art. 22.03, Secs. 2 (part), 3, 4(a) (part).)

#### Source Law

Sec. 2. . . . and no such application shall be granted except when same is adequately supported by competent evidence. . . .

Sec. 3. In considering any such application the Board shall, within thirty (30) days after public hearing, determine whether or not:

(a) The minimum capital and surplus as required by law is the bona fide property of the company;

(b) The proposed officers, directors and managing executives have sufficient insurance experience ability and standing to render success of the proposed company probable;

(c) The applicants are acting in good faith.

Sec. 4. (a) If the Board shall determine by an affirmative finding any of the above issues adversely to the applicants, it shall reject the application in writing, giving the reason therefor. Otherwise, the Board shall approve the application. On receipt of a fee of One Dollar (\$1.00), the Board shall furnish a certified copy of the application, articles of incorporation, and affidavit to the incorporators, . . . .

#### Revisor's Note

Section 4(a), V.T.I.C. Article 22.03, refers to a "fee of One Dollar (\$1.00)" for a certified copy of the application, articles of incorporation, and affidavit. That specific dollar

amount was impliedly repealed by V.T.I.C. Article 4.07, which is a comprehensive fee provision that authorizes the Texas Department of Insurance to set the amounts of various fees, including a fee "for making copies of any paper of record in the Texas Department of Insurance." Section D, Article 4.07, provides that Article 4.07 applies to stipulated premium companies. Accordingly, the revised law substitutes a general reference to a fee in the amount determined under V.T.I.C. Article 4.07.

#### Revised Law

Sec. 884.060. BEGINNING OF CORPORATE EXISTENCE. On receipt of the certified copy of documents under Section 884.059(c), the stipulated premium company becomes a body politic and corporate and the incorporators may complete organization of the company under Section 884.061. (V.T.I.C. Art. 22.03, Sec. 4(a) (part).)

#### Source Law

(a) . . . [the Board shall furnish a certified copy of the application, articles of incorporation, and affidavit to the incorporators,] upon which they shall become a body politic and corporate and may proceed to complete the organization of the company, . . . .

#### Revised Law

Sec. 884.061. ORGANIZATIONAL MEETING. (a) After receipt of the certified copy of documents under Section 884.059(c), the incorporators shall promptly call a meeting of the stipulated premium company's shareholders. The shareholders shall:

- (1) adopt bylaws to govern the company; and
- (2) elect the company's initial board of directors.

(b) The directors elected under this section serve until directors are first elected under Section 884.153. (V.T.I.C. Art. 22.03, Sec. 4(a) (part).)

#### Source Law

(a) [. . . the incorporators . . . may proceed to complete the organization of the company,] for which purpose they shall forthwith call a meeting of the stockholders who shall adopt by-laws for the government of the company, and elect a Board of Directors, . . . . The Board of Directors so elected shall serve until the second Tuesday in April thereafter, . . . .

[Sections 884.062-884.100 reserved for expansion]

### SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

#### Revised Law

Sec. 884.101. SCHEDULE OF ASSETS. Two or more officers of the stipulated premium company shall execute and file with the

department:

(1) a sworn schedule of each of the assets of the company exhibited to the department during the examination under Section 884.057 showing the value of the assets; and

(2) a sworn statement that the assets are bona fide, are the unconditional and unencumbered property of the company, and are worth the amount stated in the schedule. (V.T.I.C. Art. 22.05 (part).)

Source Law

Art. 22.05. . . . not less than two (2) officers of such company shall execute and file with the State Board of Insurance a sworn schedule of all the assets of the company exhibited to the Board upon such examination showing the value thereof, together with a sworn statement that the same are bona fide, the unconditional and unencumbered property of the company, and are worth the amount stated in such schedule. . . .

Revised Law

Sec. 884.102. TEMPORARY CERTIFICATE OF AUTHORITY. (a) If the commissioner makes a determination favorable to the applicants on all issues under Section 884.059(a), the department, on compliance with the requirements of Section 884.101, shall promptly issue to the company a temporary certificate of authority. The temporary certificate must limit the activities of the company solely to negotiating and obtaining a direct reinsurance agreement, as described by Subchapter L, with a company that on August 28, 1961, was chartered and doing business under former Chapter 14 of this code.

(b) A temporary certificate of authority expires on the first anniversary of its date of issuance unless the department renews it for an additional one-year period.

(c) On the expiration of a temporary certificate of authority the incorporators of the stipulated premium company to which the certificate was issued shall promptly surrender the company's charter to the department for cancellation. (V.T.I.C. Art. 22.05 (part).)

Source Law

Art. 22.05. . . . [After the hearing under Article 22.03 of this Code,] if the Board finds that all of the capital stock of the company amounting to not less than the minimum amount required by law has been fully paid up and is in the custody of the officers either in cash or securities of the class such companies are authorized by this Chapter to invest or loan their funds, and if the State Board of Insurance makes the other findings required by Section 3 of Article 22.03 of this Code favorably to the applicant, on compliance with the other

requirements of this article and Article 22.03 of this Code, it shall issue forthwith to such stipulated premium company a temporary certificate of authority limiting the activities of such stipulated premium company solely to the negotiating and obtaining of a direct reinsurance agreement with a company chartered and doing business under the provisions of Chapter 14 of this code on the effective date of this Act. Such certificate of authority shall terminate twelve (12) months from its date, unless renewed by the State Board of Insurance for an additional period of twelve (12) months, provided that such stipulated premium company has not theretofore consummated a direct reinsurance agreement with such a company doing business under the provisions of Chapter 14 of the Insurance Code.

Before such temporary certificate of authority is issued, . . . [officers of such company shall . . . file with the State Board of Insurance a sworn schedule of . . . assets of the company . . . together with a sworn statement . . . .]

In the event a direct reinsurance agreement be not so consummated within such twelve (12) months period, unless renewed by the State Board of Insurance for an additional period of twelve (12) months, the certificate of authority shall automatically terminate and the incorporators of such stipulated premium company shall forthwith surrender its charter to the State Board of Insurance for cancellation.

. . .

#### Revisor's Note

(1) V.T.I.C. Article 22.05 refers to "the effective date of this Act." The revised law substitutes "August 28, 1961," for "the effective date of this Act" for the reason stated in Revisor's Note (1) to Section 884.002.

(2) The revised law adds for the reader's convenience a reference to Subchapter L, which relates to direct reinsurance agreements with Chapter 14 companies (mutual assessment companies).

#### Revised Law

Sec. 884.103. REGULAR CERTIFICATE OF AUTHORITY. (a) If a direct reinsurance agreement described by Section 884.102(a) is entered into while the temporary certificate of authority is valid, the department shall promptly issue to the stipulated premium company a regular certificate of authority to transact the business of insurance in this state in accordance with Subchapter L.

(b) The regular certificate of authority shall provide for the kind of insurance business that the stipulated premium company may conduct. If the other party to the agreement conducts the business of life insurance or is a burial association, the stipulated premium company is entitled to write



life insurance policies under this chapter. If the other party is permitted under its charter to write accident insurance, health and accident insurance, or life, health, and accident insurance, the stipulated premium company is entitled to write that kind of insurance.

(c) If a stipulated premium company that holds a regular certificate of authority enters into a direct reinsurance agreement with another company engaged in business under Chapter 887 or 888, the stipulated premium company's certificate of authority shall be amended to authorize the writing of any kind of insurance authorized for the other company. (V.T.I.C. Art. 22.05 (part).)

#### Source Law

Art. 22.05. . . . In the event a direct reinsurance agreement as provided in this Chapter is consummated with such a company doing business under the provisions of Chapter 14 of this code, the State Board of Insurance shall forthwith and in accordance with the provisions of Article 22.15 of this Code issue to such a company a regular certificate of authority to transact business in the State of Texas. Likewise, such certificate of authority shall provide for the type of insurance business which may be written by the stipulated premium company; if the Chapter 14 company was engaged in the life business or was a burial association, the stipulated premium company shall be entitled and authorized to write life insurance policies as regulated by the provisions of this Chapter, and if the Chapter 14 company was permitted by its charter to write accident insurance, or health and accident insurance, or life, health and accident insurance, then the stipulated premium company shall be so permitted.

As such stipulated premium company thereafter directly reinsures additional Chapter 14 companies chartered and doing business under the provisions of Chapter 14 of this Code, its regular certificate of authority shall be amended to write any type of such insurance coverage as those authorized for any such Chapter 14 company whose policies are so assumed by the stipulated premium company.

. . .

#### Revisor's Note

(End of Subchapter)

V.T.I.C. Article 22.05 contains a provision for the expansion of authority of a company that held a regular certificate of authority to operate as a stipulated premium company on the effective date of the Act that added the provision to Article 22.05, June 17, 1967, that limited the company's

authority to an area smaller than the entire state. The Texas Department of Insurance records show that all stipulated premium companies now have statewide authority and, therefore, the revised law omits this provision as executed. The omitted law reads:

Any stipulated premium company holding a permanent certificate of authority on the effective date of this Act, and which permanent certificate of authority limits the territory of operation or writing of business of such company to an area or territory less than the entire State of Texas may, at any time thereafter, make application for, and thereafter be entitled to receive a permanent certificate of authority to operate and issue policies of insurance as so previously authorized (or as may thereafter be authorized by compliance with the provisions of this Chapter 22), anywhere within the State of Texas.

[Sections 884.104-884.150 reserved for expansion]

#### SUBCHAPTER D. MANAGEMENT OF STIPULATED PREMIUM COMPANY

##### Revised Law

Sec. 884.151. CONDUCTING SHAREHOLDERS' MEETING. (a) At a meeting of a stipulated premium company's shareholders, each shareholder is entitled to one vote for each fully paid share of stock appearing in the shareholder's name on the company's books.

(b) A shareholder may vote in person or by written proxy.

(c) At a shareholders' meeting, a quorum is any number of shareholders whose cumulative stock ownership in the stipulated premium company represents a majority of the company's paid up capital stock. (V.T.I.C. Art. 22.03, Sec. 4(a) (part).)

##### Source Law

Sec. 4. (a) . . . At all meetings of the stockholders, each stockholder shall be entitled to one vote for each share of stock fully paid up appearing in his name on the books of the company, which vote may be given in person or by written proxy. The majority of the paid up capital stock at any meeting of the stockholders shall be a quorum.

##### Revised Law

Sec. 884.152. BOARD OF DIRECTORS. (a) Subject to the bylaws of the stipulated premium company, as adopted or amended by the shareholders or directors, the board of directors has full management and control of the company.

(b) The board consists of not fewer than five directors.

(c) The directors shall keep a full and correct record of the board's transactions. The shareholders may inspect those records during business hours.

(d) The directors shall fill a vacancy that occurs on the

board or in any office of the company.

(e) A majority of the board is a quorum. (V.T.I.C. Art. 22.03, Sec. 4(a) (part).)

Source Law

(a) . . . [elect a Board of Directors,] not less than five (5) persons; which Board shall have full control and management of the affairs of the corporation, subject to the by-laws thereof as adopted or amended from time to time by the stockholders or directors, and to the laws of this state. . . . The directors shall keep a full and correct record of their transactions to be open during business hours to the inspection of stockholders. The directors shall fill any vacancy which occurs in the Board or in any office of such company. A majority of the Board shall be a quorum for the transaction of such business. . . .

Revisor's Note

(1) Section 4(a), V.T.I.C. Article 22.03, provides that the board's control of a company is subject "to the laws of this state." The revised law omits that provision as unnecessary because the provisions of state law require compliance without an express statement to that effect.

(2) Section 4(a), V.T.I.C. Article 22.03, provides that a majority of the board is a quorum "for the transaction of such business." The revised law omits the quoted phrase as unnecessary. "Quorum" means the number of persons or votes necessary for a body to act.

Revised Law

Sec. 884.153. ELECTION OF DIRECTORS. (a) On the second Tuesday of April of each year the shareholders of a stipulated premium company shall meet at the company's home office and shall elect the company's board of directors to serve one-year terms beginning immediately after the election.

(b) If the shareholders do not elect directors at that meeting, the shareholders may elect the directors at a special shareholders' meeting called for that purpose. (V.T.I.C. Art. 22.03, Sec. 4(a) (part).)

Source Law

(a) . . . [The Board of Directors so elected shall serve until the second Tuesday in April thereafter,] on which date, annually thereafter, there shall be held a meeting of the stockholders at the home office, and a Board of Directors elected for the ensuing year. If the stockholders fail to elect directors at any such annual meeting, directors may be elected at a special meeting of the stockholders called for that purpose. . . .

Revised Law

Sec. 884.154. OFFICERS. (a) A stipulated premium company's directors shall choose one of the directors to serve as the company's president.

(b) Other officers of the stipulated premium company shall be chosen in accordance with the bylaws of the company. An officer other than the president is not required to be a director or a shareholder unless such a qualification is required by the company's bylaws.

(c) The duties and compensation of a stipulated premium company's officers are as stated in the company's bylaws. If the bylaws do not state the duties or compensation of the officers, the directors shall establish the duties or compensation.

(V.T.I.C. Art. 22.03, Sec. 4(a) (part).)

Source Law

(a) . . . The directors shall choose a President from their own number, and all other officers shall be chosen in accordance with the by-laws of the company, and none of such officers need be either a director or a stockholder except as required by the by-laws of such company. The duties and compensation of officers of such company shall be in accordance with the by-laws of the company, or, to the extent of the absence of provisions governing the same in the by-laws, then the duties and compensation of officers shall be defined and fixed by the directors. . . .

Revised Law

Sec. 884.155. AMENDMENT OF CHARTER OR ARTICLES. (a) The shareholders of a stipulated premium company by resolution may amend the company's charter or articles of incorporation at any shareholders' meeting.

(b) The amendment and a copy of the resolution certified by the president and secretary of the stipulated premium company shall be filed and recorded in the same manner as the charter.

(c) An amendment of the charter or articles takes effect when it is recorded. (V.T.I.C. Art. 22.03, Sec. 4(b) (part); Art. 22.04, Sec. 1 (part).)

Source Law

[Art. 22.03]

Sec. 4. . . .

(b) At any regular or called meeting of the stockholders, they may, by resolution, provide for any lawful amendment to the charter or articles of incorporation; and such amendment, accompanied by a copy of such resolution duly certified by the President and Secretary of the company, shall be filed and recorded in the same manner as the original charter, and shall

thereupon become effective. . . .

Art. 22.04

Sec. 1. At any regular or called meeting of the stockholders, they may, by resolution, provide for any lawful amendment to the charter or articles of incorporation; and such amendment, accompanied by a copy of such resolution duly certified by the President and Secretary of the company, shall be filed and recorded in the same manner as the original charter, and shall thereupon become effective. . . .

Revisor's Note

Section 4(b), V.T.I.C. Article 22.03, provides for the amendment of a company's charter or articles at "any regular or called meeting of the stockholders." The revised law omits "regular or called" as unnecessary because a meeting of the shareholders is either "regular" or "called."

[Sections 884.156-884.200 reserved for expansion]

SUBCHAPTER E. CAPITAL AND SURPLUS

Revised Law

Sec. 884.201. FORM OF CAPITAL AND SURPLUS. After a charter is granted under this chapter, the stipulated premium company:

(1) shall maintain the company's minimum capital at all times in a form described by Section 884.054(d); and

(2) may invest the company's surplus as provided by Article 3.39. (V.T.I.C. Art. 22.01, Sec. 1 (part).)

Source Law

Sec. 1. . . . After the granting of charter, the surplus may be invested as otherwise provided in this Chapter. Notwithstanding any other provisions of this Chapter, such minimum capital shall at all times be maintained in cash or in the classes of investments described in this article; . . . .

Revisor's Note

Section 1, V.T.I.C. Article 22.01, provides that "the surplus may be invested as otherwise provided in this Chapter." While there is no provision in Chapter 22 that expressly relates to the investment of surplus, V.T.I.C. Article 3.39, which regulates the authorized investments for certain types of insurers, is made applicable to stipulated premium companies by Section 1, V.T.I.C. Article 22.18, revised as Section 884.002. Article 3.39 is the only statutory provision that provides specific authority relating to a stipulated premium company's investment of its surplus. To provide more explicit guidance for the reader of the revised statute, the revised law contains a reference to that article.

Revised Law

Sec. 884.202. INCREASE OR DECREASE OF CAPITAL STOCK. (a) At any shareholders' meeting, shareholders of a stipulated premium company whose cumulative stock ownership represents a majority of the capital stock of the company by resolution may increase or decrease the amount of the company's capital stock subject to this section.

(b) Capital stock may be decreased to an amount that is less than \$100,000 only to avoid insolvency as provided by Section 884.205 and may never be decreased to an amount that is less than the minimum amount of paid-up stock required by Section 884.054.

(c) Two officers of the stipulated premium company must sign and acknowledge a statement of the increase or decrease. The acknowledged statement and a certified copy of the resolution shall be filed and recorded in the same manner as the charter.

(d) For an increase or decrease of capital stock, the stipulated premium company may require the return of the original certificates evidencing the stock in exchange for new certificates. An issuance of new certificates that results in a transfer of stock is subject to Section 884.254. (V.T.I.C. Art. 22.03, Sec. 4(b) (part); Art. 22.04, Sec. 1 (part).)

Source Law

[Art. 22.03]

Sec. 4

(b) . . . Stockholders representing a majority of the capital stock of any such company may in such manner also increase or reduce the amount of its capital stock. The capital stock shall in no case be reduced to less than the minimum amount of fully paid up capital stock required by applicable provisions of law. A statement of any such increase or reduction shall be signed and acknowledged by two officers of the company and filed and recorded along with the certified copy of the resolution of the stockholders provided therefor in the same manner as the charter or amendment thereto. For any such increase or reduction, the company may require the return of the original certificates as other evidence of stock in exchange for new certificates issued in lieu thereof. . . .

[Art. 22.04]

Sec. 1. . . . Stockholders representing a majority of the capital stock of any such company may in such manner also increase or reduce the amount of its capital stock. The capital stock may in no case be reduced to less than One Hundred Thousand Dollars (\$100,000.00) except for the purpose of avoiding insolvency as provided in Article 22.12 of this Chapter, but in such event never less than Fifteen Thousand Dollars (\$15,000.00).

A statement of any such increase or reduction shall be signed and acknowledged by two officers of the company and filed and recorded along with the certified copy of the resolution of the stockholders provided therefor in the same manner as the charter amendment thereto. For any such increase or reduction, the company may require the return of the original certificates as evidence of stock in exchange for new certificates . . . .

#### Revisor's Note

The parts of Section 4(b), V.T.I.C. Article 22.03, and Section 1, V.T.I.C. Article 22.04, that follow the parts of the law revised in this section are revised as Section 884.254 of this code. The revised law adds a cross-reference to Section 884.254 for the reader's convenience.

#### Revised Law

Sec. 884.203. PUBLIC OFFERING OF CAPITAL STOCK. A stipulated premium company may not make to the public an offering that is subject to The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), of any of its capital stock before the company possesses:

- (1) capital in an amount of at least \$100,000; and
- (2) unencumbered surplus in an amount of at least \$100,000. (V.T.I.C. Art. 22.18, Sec. 3.)

#### Source Law

Sec. 3. Until such time as a stipulated premium company shall have and be possessed of capital of at least One Hundred Thousand Dollars (\$100,000.00) and free and unencumbered surplus in at least the amount of One Hundred Thousand Dollars (\$100,000.00), it shall be unlawful for any stipulated premium company to make a public offering, as defined in the Texas Securities Act, of any of its capital stock.

#### Revisor's Note

(1) Section 3, V.T.I.C. Article 22.18, refers to the "free and unencumbered surplus" of a stipulated premium insurance company. Throughout this chapter, the revised law substitutes "unencumbered surplus" for "free and unencumbered surplus" because, in context, the phrases are synonymous and the phrase "unencumbered surplus" is more consistent with modern usage.

(2) Section 3, V.T.I.C. Article 22.18, refers to a public offering "defined in the Texas Securities Act." The Securities Act does not define the term "public offering." The revised law refers to an offering that is subject to The Securities Act.

#### Revised Law

Sec. 884.204. COMPANY'S REPURCHASE OF STOCK. (a) Subject to Section 884.202, a stipulated premium company may purchase in the name of the company outstanding shares of the company's

capital stock as provided by the Texas Business Corporation Act.

(b) A purchase of stock under this section is not considered an investment and does not violate the provisions of this code relating to eligible investments for a stipulated premium company.

(c) A stipulated premium company that purchases stock under this section shall file with the department not later than the 10th day after the date of the purchase a statement that contains the name of each shareholder from whom the shares were purchased and the sum of money paid for those shares. (V.T.I.C. Art. 22.04, Sec. 2.)

#### Source Law

Sec. 2. Subject to Section 1 of this article, any stipulated premium company may purchase issued and outstanding shares of the capital stock of that company in the name of the company as provided by the Texas Business Corporation Act. A purchase of stock made under this section shall not be considered an investment and does not constitute a violation of the provisions of this code relating to eligible investments for such a company. A company that makes such a purchase shall file a statement with the Commissioner of Insurance that sets forth the name of each shareholder from whom the shares have been purchased and the sum of money paid for those shares. The statement must be filed not later than the tenth (10th) day after the date of the purchase.

#### Revisor's Note

Section 2, V.T.I.C. Article 22.04, refers to "issued and outstanding shares" of stock. The revised law omits the reference to "issued" as unnecessary because a share of a company may not be outstanding unless it has been issued by the company.

#### Revised Law

Sec. 884.205. IMPAIRMENT OF CAPITAL STOCK. (a) If, when computing the liabilities of a stipulated premium company under this chapter, one-third or more of the company's capital stock becomes impaired, the company shall correct the impairment not later than the 60th day after the date the company becomes subject to this subsection by:

- (1) reducing the company's capital stock subject to the limitation provided by Section 884.202(b);
- (2) adjusting the premium rate if permitted by policy contract; or
- (3) both reducing capital stock and adjusting the premium rate.

(b) If, when computing a stipulated premium company's reserve liability under this chapter, 50 percent or more of the company's capital stock becomes impaired, the commissioner may apply to a court for the appointment of a receiver to wind up the



affairs of the company. (V.T.I.C. Art. 22.12 (part)).)

Source Law

Art. 22.12. Any stipulated premium company transacting business within this state, whose capital stock shall become impaired to the extent of thirty-three and one-third per cent (33 1/3%) thereof, computing its liabilities in the manner provided for in this Chapter of this Code, shall make good such impairment within sixty (60) days by: (a) a reduction of its capital stock (provided such capital stock shall in no case be less than the minimum amount required of a stipulated premium company by this Chapter); or (b) by rate adjustment where permitted by policy contract; or (c) by both such methods; . . . .

The State Board of Insurance may apply to any court of competent jurisdiction for the appointment of a receiver to wind up the affairs of such company when its capital stock shall become impaired to the extent of fifty per cent (50%) thereof; computing its reserve liability in the manner provided by this Chapter for the computation of such reserve liability. . . .

Revisor's Note

V.T.I.C. Article 22.12 refers to a suit brought "in a court of competent jurisdiction." The revised law omits the quoted language as unnecessary because a suit may only be brought in a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 884.206. COMMISSIONER MAY REQUIRE LARGER CAPITAL AND SURPLUS AMOUNTS. (a) The commissioner by rule may require a stipulated premium company that writes or assumes life insurance, annuity contracts, or accident and health insurance for a risk to one person in an amount that exceeds \$10,000 to maintain capital and surplus in amounts that exceed the minimum amounts required by this chapter because of:

- (1) the nature and kind of risks the company underwrites or reinsures;
- (2) the premium volume of risks the company underwrites or reinsures;
- (3) the composition, quality, duration, or liquidity of the company's investment portfolio;
- (4) fluctuations in the market value of securities the company holds; or
- (5) the adequacy of the company's reserves.

(b) A rule adopted under Subsection (a) must be designed to ensure the financial solvency of a stipulated premium company for the protection of policyholders and may not require that the

total admitted assets of a company exceed 106 percent of its total liabilities. (V.T.I.C. Art. 22.13, Secs. 2(e), (f).)

Source Law

(e) In addition to the capital requirements under Subsection (d) of this section, the board may adopt rules and regulations requiring a stipulated premium company that writes or assumes life insurance, annuity contracts or health, accident, sickness or hospitalization insurance for any risk in excess of \$10,000 to any one person to maintain capital and surplus levels in excess of the statutory minimum capital levels required by Chapter 22 of this Code based upon any of the following factors:

- (1) the nature and type of risks a company underwrites or reinsures;
- (2) the premium volume of risks a company underwrites or reinsures;
- (3) the composition, quality, duration, or liquidity of a company's investment portfolio;
- (4) fluctuations in the market value of securities a company holds; or
- (5) the adequacy of a company's reserves.

(f) The rules adopted under Subsection (e) of this section shall be designed to assure the financial solvency of companies for the protection of policyholders and may not, according to the dates specified, require that the total admitted assets of a company exceed the following percentages of its total liabilities:

- (1) as of December 31, 1992, 103 percent;
- (2) as of December 31, 1993, 103 percent;
- (3) as of December 31, 1994, 103 percent;
- (4) as of December 31, 1995, 104 percent;
- (5) as of December 31, 1996, 105 percent; and
- (6) as of December 31, 1997, 106 percent.

Revisor's Note

(1) Section 2(e), V.T.I.C. Article 22.13, refers to "rules and regulations." The reference to "regulations" is omitted from the revised law because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

(2) Section 2(e), V.T.I.C. Article 22.13, refers to "health, accident, sickness or hospitalization" insurance. Section 2(a), V.T.I.C. Article 22.13, revised in Chapter 1302, provides that "Chapter 397, Acts of the 54th Legislature, Regular Session, 1955 (Article 3.70-1 et seq., Insurance Code)" applies to the issuance of health, accident, sickness, and hospitalization policies by a stipulated premium company. Chapter 1302 of this code, the revision of Article 3.70-1 et

seq., uses the term "accident and health insurance policy" when referring to those types of policies and that term has been substituted for "health, accident, sickness or hospitalization policy" throughout this chapter.

(3) Section 2(f), V.T.I.C. Article 22.13, provides a series of limits for admitted assets based on percentages of liabilities for years 1992 to 1997. The revised law omits the series as executed.

#### Revised Law

Sec. 884.207. NEW BUSINESS PROHIBITED WHEN CAPITAL REQUIREMENTS NOT SATISFIED. (a) A stipulated premium company may not write new business in this state unless the company possesses the minimum capital required under this chapter.

(b) A stipulated premium company subject to Section 884.205(a) that does not correct the impairment on or before the date provided by that subsection may not write new business in this state after that date until the impairment is corrected. (V.T.I.C. Art. 22.12 (part).)

#### Source Law

Art. 22.12. . . . and failing to make good such impairment within said time shall forfeit its right to write new business in this state until said impairment shall have been made good.

. . . No stipulated premium company shall write new business unless it is possessed of the minimum capital required by this Chapter 22, except to the extent it may be otherwise expressly authorized by this Chapter of this Code.

#### Revisor's Note

V.T.I.C. Article 22.12 provides that a stipulated premium company that does not meet the minimum capital requirement may not write new business, "except to the extent it may be otherwise expressly authorized by this Chapter of this Code." The revised law omits the quoted phrase because Chapter 22, Insurance Code, revised as this chapter, does not authorize a stipulated premium company to write business without maintaining the minimum capital.

[Sections 884.208-884.250 reserved for expansion]

#### SUBCHAPTER F. GENERAL POWERS AND DUTIES OF STIPULATED PREMIUM COMPANY

#### Revised Law

Sec. 884.251. DEPOSIT OF COMPANY'S FUNDS. (a) A director, member of a committee, officer, or clerk of a stipulated premium company who has the duty of handling or investing the company's funds shall deposit or invest those funds in the corporate name of the company.

(b) An individual described by Subsection (a) may not:  
(1) borrow the funds of the stipulated premium

company;

(2) have an interest in any way in a loan, pledge, security, or property of the company, except as shareholder; or

(3) take or receive for the individual's use a fee, brokerage, commission, gift, or other consideration for, or on account of, a loan made by or on behalf of the company.

(V.T.I.C. Art. 22.10.)

Source Law

Art. 22.10. Any director, member of a committee, or officer, or any clerk of a stipulated premium company, who is charged with the duty of handling or investing its funds, shall not deposit or invest such funds, except in the corporate name of such company; shall not borrow the funds of such company; shall not be interested in any way in any loan, pledge, security or property of such company, except as stockholder; shall not take or receive to his own use any fee, brokerage, commission, gift or other consideration for, or on account of, a loan made by or on behalf of such company.

Revised Law

Sec. 884.252. PAYMENTS TO OFFICERS, DIRECTORS, AND EMPLOYEES. (a) Unless first authorized by a vote of a stipulated premium company's board of directors or a committee of the board that has the duty of authorizing the payment, the company may not pay:

(1) any compensation or emolument to an officer or director of the company; or

(2) compensation or emolument in an amount that exceeds \$50,000 in any year to an individual, firm, or corporation that is not an officer or director of the company.

(b) This section does not prevent a stipulated premium company from contracting with its agents for the payment of renewal commissions.

(c) The shareholders of a stipulated premium company may authorize the creation of one or more plans for the payment of pensions, retirement benefits, or group insurance for its officers and employees. The shareholders may delegate to the company's board of directors the power and duty to prepare, effect, finally approve, administer, and amend a plan. (V.T.I.C. Art. 22.09.)

Source Law

Art. 22.09. (a) No stipulated premium company shall pay any salary, compensation or emolument to any officer, trustee, or director thereof, nor any salary, compensation or emolument amounting in any year to more than Fifty Thousand Dollars (\$50,000.00) to any person, firm or corporation, unless such

payment be first authorized by a vote of the Board of Directors of such company, or by a committee of such Board charged with the duty of authorizing such payments. The limitation as to time contained herein shall not be construed as preventing any stipulated premium company from entering into contracts with its agents for the payment of renewal commissions.

(b) The stockholders of any such stipulated premium company may authorize the inauguration of a plan or plans for the payment of pensions, retirement benefits or group insurance to its officers and employees. The stockholders may delegate to the Board of Directors authority and responsibility for the preparation, inauguration, putting into effect, final approval and administration of any such plan or plans or any amendments thereof.

#### Revisor's Note

(1) Subsection (a), V.T.I.C. Article 22.09, refers to "salary, compensation or emolument." The reference to "salary" is omitted from the revised law because "salary" is included within the meaning of "compensation."

(2) Subsection (a), V.T.I.C. Article 22.09, refers to a company's "trustee." This is the only reference in Chapter 22 to that term. A company is governed by directors rather than trustees. The revised law omits the reference as unnecessary.

(3) Subsection (b), V.T.I.C. Article 22.09, refers to "the preparation, inauguration, putting into effect, final approval and administration of any such plan or plans." The revised law omits the reference to "inauguration" because in this context it is included in the action of "putting into effect."

#### Revised Law

Sec. 884.253. DIVIDENDS. (a) A stipulated premium company may declare or pay a dividend to its shareholders only from the profits made by the company, not including surplus from the sale of stock.

(b) A stipulated premium company may not pay a dividend, other than a stock dividend, unless:

(1) any deficiency reserve under Section 884.453 has been eliminated; and

(2) the capital of the company is maintained in an amount of at least \$100,000.

(c) A stipulated premium company that complies with Subsection (b) may pay cash dividends in accordance with Article 21.32. (V.T.I.C. Art. 22.08.)

#### Source Law

Art. 22.08. No stipulated premium company shall declare or pay any dividends to its stockholders except from the profits made by said company not including surplus arising from the sale

of stock, and shall pay no dividends except stock dividends until: (a) the capital of said stipulated premium company shall be at least One Hundred Thousand Dollars (\$100,000.00); (b) the deficiency reserve as permitted by this Chapter has been retired; and (c) capital of said stipulated premium company is maintained at not less than One Hundred Thousand Dollars (\$100,000.00). Thereafter cash dividends may be paid in accordance with this Chapter.

#### Revisor's Note

V.T.I.C. Article 22.08 provides that "cash dividends may be paid in accordance with this Chapter." While there is no provision in Chapter 22 that expressly relates to the payment of dividends, V.T.I.C. Article 21.32, which regulates the payment of dividends for certain types of insurers, is made applicable to stipulated premium companies by Section 1, V.T.I.C. Article 22.18, revised as Section 884.002. Article 21.32 is the only statutory provision that provides specific requirements relating to a stipulated premium company's payment of dividends. To provide more explicit guidance for the reader of the revised statute, the revised law contains a reference to that article.

#### Revised Law

Sec. 884.254. TRANSFER OF STOCK. (a) A stipulated premium company's shares of stock are transferable on the company's books, in accordance with law and the bylaws of the company, by the owner or the owner's authorized agent.

(b) Each person who becomes a shareholder by a transfer of shares succeeds to all rights of the former holder of those shares, by reason of that ownership. (V.T.I.C. Art. 22.03, Sec. 4(b) (part); Art. 22.04, Sec. 1 (part).)

#### Source Law

[Art. 22.03]

Sec. 4

(b) . . . The shares of stock of such company shall be transferable on its books, in accordance with law and the by-laws of the company, by the owner in person or his authorized agent. Every person becoming a stockholder by such transfer shall succeed to all rights of the former holder of the stock transferred, by reason of such ownership.

Art. 22.04

Sec. 1. . . . [For any such increase or reduction, the company may require the return of the original certificates as evidence of stock in exchange for new certificates] transferable on its books, in accordance with this Chapter and the by-laws of the company, by the owner in person or his authorized agent. Every person becoming a stockholder by such transfer shall succeed to all rights of the former holder of the stock

transferred, by reason of such ownership.

Revised Law

Sec. 884.255. USE OF CERTAIN TERMS IN ADVERTISING. A stipulated premium company may not use in its advertising or representation of a policy the words "legal reserve company," "stock company," "old line legal reserve company," or words of similar meaning that might lead the public to believe that a policy provides nonforfeiture values. (V.T.I.C. Art. 22.17 (part).)

Source Law

Art. 22.17. No stipulated premium company may ever use in its advertising or representation of its policies the words: "legal reserve company," "stock company," "old line legal reserve company," or any other words of like import whereby the public might be led to believe that policies of stipulated premium companies provide non-forfeiture values. . . .

Revised Law

Sec. 884.256. ANNUAL STATEMENT; FILING FEE. (a) Except as provided by Section 884.406, not later than March 31 of each year a stipulated premium company shall:

(1) prepare a statement showing the condition of the company on December 31 of the preceding year; and

(2) deliver the statement to the department accompanied by a filing fee in the amount determined under Article 4.07.

(b) The statement must be under the oath of two of the stipulated premium company's officers and must show in detail:

(1) the character of the company's assets and liabilities on December 31 of the preceding year;

(2) the amount and character of business transacted and money received during the year and how money was spent during the year;

(3) the number and amount of the company's policies in force on that date; and

(4) the total amount of the company's policies in force on that date.

(c) For purposes of Subsection (b), an insured under a family group policy to which Section 884.451(b) applies is accounted for only if a reserve is required for that insured under that section.

(d) The department shall prescribe the form of the statement.

(e) Fees collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account. Article 1.31A applies to fees collected under this

section. (V.T.I.C. Art. 22.06.)

Source Law

Art. 22.06. Each stipulated premium company shall after the first day of January of each year and before the first day of April prepare under oath of two (2) of its officers and deposit in the office of the State Board of Insurance a statement accompanied with the fee for filing annual statements of Twenty Dollars (\$20.00) showing the condition of the stipulated premium company on the 31st day of December next preceding, which shall include a statement in detail showing the character of its assets and liabilities on that date, the amount and character of business transacted, monies received, and how expended during the year, and the number and amount of its policies in force on that date and the total amount of its policies in force, except that insureds under family group policies as defined in Art. 22.11, Section 1(b) of this Code will be accounted for only if a reserve is required as to such insured under said Art. 22.11, Section 1(b). The form of such annual statement shall be prepared and determined by the State Board of Insurance. Filing fees collected by the State Board of Insurance under this article shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund. Article 1.31A of this code applies to filing fees under this article.

Revisor's Note

(1) V.T.I.C. Article 22.06 refers to "the fee for filing annual statements of Twenty Dollars (\$20.00)." That specific dollar amount was impliedly repealed by V.T.I.C. Article 4.07, which is a comprehensive fee provision that authorizes the Texas Department of Insurance to set the amounts of various fees, including fees for annual statements. Section D, Article 4.07, provides that Article 4.07 applies to stipulated premium companies, and under 28 Tex. Admin. Code Sec. 7.1301, the fee for an annual statement by a company subject to V.T.I.C. Chapter 22 is \$250. Accordingly, the revised law substitutes a general reference to a fee in the amount determined under V.T.I.C. Article 4.07.

(2) V.T.I.C. Article 22.06 refers to December 31 of the "next preceding" year. The revised law omits "next" as unnecessary. "[T]he preceding" means "the next preceding."

(3) V.T.I.C. Article 22.06 requires fees to be deposited in the state treasury to the credit of the State Board of Insurance operating fund. Under the authority of Chapter 4, Acts of the 72nd Legislature, 1st Called Session, 1991, the Texas Department of Insurance operating fund (the later name of the State Board of Insurance operating fund) was converted to an account in the general revenue fund. The revised law is drafted accordingly.



[Sections 884.257-884.300 reserved for expansion]

SUBCHAPTER G. POWERS AND DUTIES RELATING TO COVERAGES

Revised Law

Sec. 884.301. REINSURANCE OF POLICY. (a) A stipulated premium company may reinsure on an individual indemnity policy basis any risk or part of a risk that the company underwrites or assumes.

(b) The reinsurer must be a legal reserve company that:

(1) is authorized to write life, health, and accident insurance in this state; and

(2) has capital and surplus in an amount of at least \$200,000.

(c) After reinsuring under Subsection (a), a stipulated premium company may take a credit for the reinsurance against the aggregate reserves required by Subchapter J. (V.T.I.C. Art. 22.07, Sec. 1.)

Source Law

Art. 22.07

Sec. 1. Any stipulated premium company may reinsure on an individual indemnity policy basis with any legal reserve company authorized to write life, health and accident insurance in this state having a capital and surplus or surplus of at least Two Hundred Thousand Dollars (\$200,000.00) any risk or part of a risk which the stipulated premium company may issue or assume, and upon such reinsurance proper credit therefor may be taken against the aggregate reserves required by Art. 22.11 of this Chapter.

Revisor's Note

Section 1, V.T.I.C. Article 22.07, refers to "capital and surplus or surplus of at least" \$200,000. The revised law omits the phrase "or surplus" because if a company has a surplus of at least \$200,000 the combined amount of its capital and surplus is at least \$200,000.

Revised Law

Sec. 884.302. LIMITS ON LIFE INSURANCE. (a) Until the amount of the surplus of a stipulated premium company is at least \$50,000, the company may not insure one life for more than \$1,000 in the event of death from natural causes or more than \$2,000 in the event of death from accidental causes, unless the company reinsures the amount of coverage greater than that applicable amount under Section 884.301.

(b) Subsection (a) does not apply to a policy of insurance assumed by a stipulated premium company under Subchapter L.

(c) If the amount of the surplus of a stipulated premium company is at least \$50,000 but less than \$200,000, the company shall reinsure the insurance amount that exceeds \$15,000 on a life insurance risk on one life. (V.T.I.C. Art. 22.07, Secs. 2,

3.)

Source Law

Sec. 2. Until the surplus of any stipulated premium company is at least Fifty Thousand Dollars (\$50,000.00), no such stipulated premium company shall insure any life for more than One Thousand Dollars (\$1,000.00) in the event of death from natural causes nor more than Two Thousand Dollars (\$2,000.00) in the event of death from accidental causes, unless such stipulated premium company reinsures the amount of coverage above One Thousand Dollars (\$1,000.00) in the event of natural death and the amount of coverage above Two Thousand Dollars (\$2,000.00) in the event of accidental death with a legal reserve company authorized to write life, health and accident insurance in this state having a capital and surplus or surplus of at least Two Hundred Thousand Dollars (\$200,000.00); provided, however, the provisions of this Section of this Art. 22.07 shall not apply to policies of insurance assumed by a stipulated premium company pursuant to the provisions of Art. 22.15 of this Chapter.

Sec. 3. If the surplus of a stipulated premium company is at least Fifty Thousand Dollars (\$50,000.00) but less than Two Hundred Thousand Dollars (\$200,000.00), the stipulated premium company shall reinsure the insurance amount that exceeds Fifteen Thousand Dollars (\$15,000) on a life insurance risk on any one life.

Revisor's Note

Section 2, V.T.I.C. Article 22.07, requires certain stipulated premium companies to reinsure certain life insurance policies with "a legal reserve company authorized to write life, health and accident insurance in this state having a capital and surplus or surplus of at least Two Hundred Thousand Dollars (\$200,000.00)." The requirements prescribed by Section 2 are identical to those prescribed by Section 1, V.T.I.C. Article 22.07, revised as Section 884.301, which applies to reinsurance of any policy issued by a stipulated premium company. The revised law substitutes a reference to Section 884.301 for the quoted language.

Revised Law

Sec. 884.303. ISSUANCE OF LIFE INSURANCE POLICIES BY CERTAIN COMPANIES. (a) A stipulated premium company that possesses capital and unencumbered surplus in a combined amount of at least \$100,000 may issue life insurance policies as authorized for a company operating under Chapter 841.

(b) A stipulated premium company may not insure one life under this section for more than \$15,000, except as provided by Section 884.304 or Subchapter I.

(c) A stipulated premium company may issue a policy under

this section only on an endowment or limited pay basis.

(d) A stipulated premium company must reserve and reinsure a policy issued under this section as required for a company operating under Chapter 841. (V.T.I.C. Art. 22.23(a).)

Source Law

Art. 22.23. (a) Each stipulated premium company possessing capital and unencumbered surplus of at least the combined total sum of \$100,000.00 may issue policies of life insurance as authorized and permitted under the provisions of Chapter Three of this Insurance Code provided that:

(1) no individual life shall be insured for more than \$15,000, except as provided by Section 1(b), Article 22.13, of this code or Article 22.23A of this code;

(2) each such policy shall be reserved and reinsured as required under the provisions of Chapter Three of this Insurance Code; and

(3) each such life policy shall be issued only upon an endowment or limited pay basis.

Revisor's Note

V.T.I.C. Article 22.23(a) refers to policies of life insurance authorized under V.T.I.C. Chapter 3 and to the reservation and reinsurance of a life insurance policy as required under that chapter. The portions of Chapter 3 that relate to the organization of companies that are authorized to write that type of life insurance and that are subject to the appropriate reserve and reinsurance requirements are revised as Chapter 841. The revised law is drafted accordingly.

Revised Law

Sec. 884.304. LIFE INSURANCE OF MORE THAN \$15,000. (a) Except as provided by this section, a stipulated premium company may not assume liability on a life insurance risk on one life in an amount that exceeds \$15,000.

(b) If a stipulated premium company assumes a life insurance risk under a life insurance policy, the initial death benefit of \$15,000 or less may increase to an amount greater than \$15,000 subject to this section.

(c) For each policy year of a policy for which, after issuance, the death benefit exceeds \$15,000, the amount of the increase of the death benefit at the end of that policy year from the end of the preceding policy year may not exceed the greater of:

(1) the amount computed using the maximum rate of increase provided by the policy, which rate may not exceed five percent a year, compounded annually; or

(2) the amount computed using the consumer price index for all urban consumers for all items and for all regions of the

United States combined, as determined by the United States Department of Labor, Bureau of Labor Statistics, on September 30 of the year preceding the year in which the policy year ends, compounded annually. (V.T.I.C. Art. 22.13, Sec. 1(b).)

Source Law

(b) Except as otherwise provided by this subsection, it shall be unlawful for any stipulated premium company to assume liability on a life insurance risk on any one life in an amount in excess of Fifteen Thousand Dollars (\$15,000). If a stipulated premium company assumes a life insurance risk under a life insurance policy, the initial death benefit of Fifteen Thousand Dollars (\$15,000) or less may increase to an amount greater than Fifteen Thousand Dollars (\$15,000). For a policy in which the death benefit subsequent to issuance exceeds Fifteen Thousand Dollars (\$15,000), the death benefit at the end of each policy year may not exceed the greater of the maximum increase as specified in the policy, compounded annually, or the CPI-U, compounded annually. The maximum increase that may be specified in a life insurance policy subject to this article is five percent, compounded annually. For purposes of this subsection, the CPI-U for a given calendar year is the consumer price index for all urban consumers for all items and for all regions of the United States, combined as determined by the United States Department of Labor, Bureau of Labor Statistics, on September 30 of the prior calendar year.

Revised Law

Sec. 884.305. PREMIUMS ON LIFE INSURANCE POLICIES. The premiums charged on a life insurance policy issued by a stipulated premium company may not be less than the renewal net premium computed under the reserve standard adopted by the stipulated premium company and approved by the department. (V.T.I.C. Art. 22.11, Sec. 7.)

Source Law

Sec. 7. Premiums charged on all life policies issued by stipulated premium companies shall be at least equal to the renewal net premium calculated in accordance with the reserve standard adopted by the stipulated premium company and approved by the State Board of Insurance.

Revised Law

Sec. 884.306. LIFE INSURANCE CONTRACT. A life insurance policy issued by a stipulated premium company constitutes the entire contract, except that if a copy of the application for the policy is attached to the policy, the policy and application constitute the entire contract. (V.T.I.C. Art. 22.13, Sec. 1(a))

(part).)

Source Law

(a) . . . The policy, or the policy and the application if a copy of the application is attached to the policy, shall constitute the entire contract. . . .

Revised Law

Sec. 884.307. ISSUANCE OF ANNUITY CONTRACT. (a) A stipulated premium company that possesses capital and unencumbered surplus in a combined amount of at least \$100,000 more than all of its liabilities, including contingent liabilities, may issue annuity contracts as authorized by Chapter 3 and Title 7.

(b) The stipulated premium company shall maintain reserves on the contracts in accordance with the statutes governing reserves on equivalent contracts issued by a legal reserve company.

(c) A stipulated premium company that writes annuity contracts under this section shall maintain capital and unencumbered surplus in at least the combined amount required by Subsection (a).

(d) A stipulated premium company that does not comply with Subsection (c) is considered to be insolvent. (V.T.I.C. Art. 22.23(b).)

Source Law

(b) Each stipulated premium company possessing capital and unencumbered surplus of at least the combined total sum of \$100,000.00, over and above all liabilities, including contingent liabilities, may issue annuity contracts as authorized and permitted under the provisions of Chapter Three of this Insurance Code. Reserves on such contracts shall be maintained in accordance with the statutes governing reserves on equivalent contracts issued by legal reserve companies, as such laws now exist or as they may hereafter be amended. Any insurer which elects to write annuity contracts under authority of this Article shall thereafter be required to maintain capital and unencumbered surplus of at least the combined total sum of \$100,000.00, over and above all liabilities, including contingent liabilities, and any such company shall be regarded as insolvent which fails to maintain capital and unencumbered surplus of at least a combined total sum of \$100,000.00, over and above all liabilities, including contingent liabilities.

Revisor's Note

(1) V.T.I.C. Article 22.23(b) refers to the issuance of annuity contracts as authorized by "Chapter Three of this

Insurance Code." Some of the pertinent provisions of Chapter 3 are revised in Title 7 of this code. The revised law is drafted accordingly.

(2) V.T.I.C. Article 22.23(b) requires a stipulated premium company to maintain reserves on annuity contracts it issues "in accordance with the statutes governing reserves on equivalent contracts issued by legal reserve companies, as such laws now exist or as they may hereafter be amended." The revised law omits the phrase "as such laws now exist or as they may hereafter be amended" because under Section 311.027, Government Code (Code Construction Act), applicable to the revised law, a reference to a statute applies to all reenactments, revisions, and amendments of the statute.

#### Revised Law

Sec. 884.308. LIMITS ON AMOUNT OF ACCIDENT AND HEALTH INSURANCE POLICIES. (a) A stipulated premium company may not assume liability on or indemnify one person for any risk under one or more accident, health, or hospitalization insurance policies, or any combination of those policies in an amount that exceeds \$10,000, unless the amount of the issued, outstanding, and stated capital of the company is at least \$700,000.

(b) A stipulated premium company that before January 1, 2002, ceases to assume liability on, or indemnify any risk under a policy described by Subsection (a) in the amount specified by Subsection (a), and notifies the commissioner of that action is exempt from the requirements of Subsection (a) until the date the company resumes writing those policies. A company that resumes assuming liability on or indemnifying risks under these policies shall comply with Subsections (a) and (c). For purposes of this subsection, renewal of a policy is not considered to be writing a policy.

(c) A stipulated premium company that is exempt under Subsection (b) shall maintain its issued, outstanding, and stated capital in an amount that is at least:

(1) \$100,000, if the last date that the company writes a policy described by Subsection (a) is before January 1, 1993;

(2) \$160,000, if the last date that the company writes a policy described by Subsection (a) is during 1993;

(3) \$220,000, if the last date that the company writes a policy described by Subsection (a) is during 1994;

(4) \$280,000, if the last date that the company writes a policy described by Subsection (a) is during 1995;

(5) \$340,000, if the last date that the company writes a policy described by Subsection (a) is during 1996;

(6) \$400,000, if the last date that the company writes a policy described by Subsection (a) is during 1997;

(7) \$460,000, if the last date that the company writes a policy described by Subsection (a) is during 1998;

(8) \$520,000, if the last date that the company writes a policy described by Subsection (a) is during 1999;

(9) \$580,000, if the last date that the company writes a policy described by Subsection (a) is during 2000; and

(10) \$640,000, if the last date that the company writes a policy described by Subsection (a) is during 2001.

(V.T.I.C. Art. 22.13, Secs. 2(d), (g).)

Source Law

(d) A stipulated premium company may not assume liability on, or indemnify any one person for, any risk under any health, accident, sickness, or hospitalization policy, or any combination of those policies, in an amount in excess of \$10,000, unless the issued, outstanding, and stated capital of the company is:

- (1) at least \$100,000 as of December 31, 1991;
- (2) at least \$160,000 as of December 31, 1992;
- (3) at least \$220,000 as of December 31, 1993;
- (4) at least \$280,000 as of December 31, 1994;
- (5) at least \$340,000 as of December 31, 1995;
- (6) at least \$400,000 as of December 31, 1996;
- (7) at least \$460,000 as of December 31, 1997;
- (8) at least \$520,000 as of December 31, 1998;
- (9) at least \$580,000 as of December 31, 1999;
- (10) at least \$640,000 as of December 31, 2000; and
- (11) at least \$700,000 as of December 31, 2001.

(g) If a stipulated premium company ceases to write new health, accident, sickness, or hospitalization policies, or any combination of those policies, in an amount in excess of \$10,000 for any one risk, and so notifies the commissioner, the requirements imposed under Subsection (d) of this section relating to increase of minimum capital shall be suspended until the date on which the stipulated premium company resumes writing those health, accident, sickness, or hospitalization policies, and upon such resumption of writing of such policies, the stipulated premium company shall be required to increase its capital to the amount required by Subsection (d) as of the date of such resumption of such policy writings. For purposes of this subsection, renewal of a policy is not the writing of a new health, accident, sickness, or hospitalization policy.

Revised Law

Sec. 884.309. ADJUSTMENT OF PREMIUMS. (a) The board of directors of a stipulated premium company by resolution may, subject to this chapter, increase or otherwise adjust a rate of premium on any insurance policy it issues, reinsures, or assumes when, in the board's discretion, the adjustment is necessary.

(b) In making a comprehensive adjustment of one or more

classes of the stipulated premium company's policies, the board of directors may provide that an insured who is required to pay an increased premium may choose to pay a part or none of the amount of the increase and receive a reduction of the corresponding insurance benefits proportionate to the value of the unpaid part of the increase.

(c) This section does not apply to a policy:

(1) issued by a stipulated premium company that on the date the policy is issued possesses an unencumbered surplus in an amount of at least \$50,000;

(2) on which the stipulated premium company has relinquished the right to adjust rates; and

(3) under which the premium for life insurance requires the payment of a premium for life insurance that alone is sufficient to maintain reserves at least equal to those computed on the basis of the 1958 Commissioners Standard Ordinary Table of Mortality with interest not to exceed 3-1/2 percent a year. (V.T.I.C. Art. 22.13, Sec. 3 (part).)

#### Source Law

Sec. 3. [Each stipulated premium company shall provide in all policies of insurance issued, reinsured, or assumed by it for an increase or readjustment,] not inconsistent with the provisions of this Chapter, of the rates of premium on any such insurance contracts, to be effectuated by resolution of its Board of Directors, whenever in their discretion such action becomes necessary. The Board of Directors shall have power in making any comprehensive readjustment of any class or classes of its policies, that any insured required to pay an increased premium may, at his option, in lieu thereof, or in combination therewith, consent to a reduction of the corresponding insurance benefits proportionate to the value of the increased premiums. Such requirement as to such policy provisions shall not apply to policy forms under which the premium for life insurance requires the payment of a premium for life insurance alone sufficient to maintain reserves at least equal to those computed on the basis of the 1958 Commissioners Standard Ordinary Table of Mortality with interest not to exceed three and one-half per cent (3 1/2%) per annum and upon which the right to adjust rates has been relinquished by the stipulated premium company, provided that the stipulated premium company is possessed of free and unencumbered surplus in at least the amount of Fifty Thousand Dollars (\$50,000.00) at the date of issuance of each such policy.

#### Revised Law

Sec. 884.310. AGENT. Each agent of a stipulated premium company must be licensed under Article 21.07. (V.T.I.C. Art. 22.14.)



Source Law

Art. 22.14. All agents of stipulated premium companies shall be licensed in accordance with the provisions of Art. 21.07 of Chapter 21 of this Code.

[Sections 884.311-884.350 reserved for expansion]

SUBCHAPTER H. CONTENTS OF APPLICATIONS AND POLICIES

Revised Law

Sec. 884.351. GENERAL REQUIREMENTS FOR POLICY AND APPLICATION FORMS. (a) Each stipulated premium company policy or application form must contain on its face immediately after the name of the company "A Stipulated Premium Company."

(b) A stipulated premium company shall provide for an adjustment of the premium rate on the insurance contract in each insurance policy it issues, reinsures, or assumes that is subject to a premium adjustment under Section 884.309. Each policy subject to a premium adjustment under that section must contain on the front of the policy a statement that the premium is subject to readjustment.

(c) A stipulated premium company's policy of insurance may not contain "Approved by the Commissioner of Insurance" or words of a similar meaning.

(d) A life insurance policy issued by a stipulated premium company or an application for the policy may not contain language or be in a form that misleads the policyholder or applicant about the kind of insurance offered or the rights or benefits of the policyholder or applicant. (V.T.I.C. Art. 22.13, Secs. 1(a) (part), 3 (part), 6; Art. 22.17 (part).)

Source Law

[Art. 22.13]

Sec. 1. (a) . . . No policy nor the application therefor shall contain language or be in such form as to mislead the applicant or policyholder as to the type of insurance afforded nor as to his rights or benefits.

Sec. 3. Each stipulated premium company shall provide in all policies of insurance issued, reinsured, or assumed by it for an increase or readjustment, . . . of the rates of premium on any such insurance contracts, . . . .

Sec. 6. No policy of insurance shall be approved for issuance of a stipulated premium company which shall contain thereon the words, "Approved by the State Board of Insurance," or words of a similar import or nature, and it shall be unlawful for any stipulated premium company to ever issue a policy containing

such words or words of a similar import or nature.

Art. 22.17. . . . All stipulated premium company policies and application forms must contain on the face thereof and immediately after the name of the company, the following language: "A Stipulated Premium Company." Each stipulated premium company policy shall provide on the front thereof that the premium is subject to readjustment, unless such policy is not subject to a premium readjustment under the provisions of Section 3 of Art. 22.13 of this Chapter.

Revised Law

Sec. 884.352. REQUIREMENTS FOR ACCIDENT, HEALTH, AND HOSPITALIZATION INSURANCE POLICIES. An accident, health, or hospitalization insurance policy issued, reinsured, or assumed by a stipulated premium company must contain a premium redetermination clause that permits the company's board of directors to adjust the premium rate. (V.T.I.C. Art. 22.13, Sec. 2(b).)

Source Law

(b) All health, accident, sickness and hospitalization policies issued, reinsured or assumed by a stipulated premium company shall contain therein a premium redetermination clause so as to permit a rate readjustment by action of the Board of Directors of the stipulated premium company.

Revised Law

Sec. 884.353. LIFE INSURANCE APPLICATION FORMS. (a) An application for a life insurance policy issued by a stipulated premium company must be signed by the applicant. If the applicant is a minor, the application may be signed by a parent or guardian.

(b) The application for a policy that provides that a misstatement relating to the applicant's health or physical condition may void the policy within the contestable period must state that provision in language approved by the department. The statement must be in not less than 10-point type.

(c) In the absence of fraud each statement in an application is regarded as a representation and not a warranty. (V.T.I.C. Art. 22.13, Sec. 1(a) (part).)

Source Law

(a) . . . An application for each policy must be signed by the applicant, unless the applicant is a minor, in which event the application may be signed by a parent or guardian. . . . If the policy is to provide that misstatement as to the health or physical condition of the applicant may void the policy within the contestable period, the application shall so state in not less than ten (10) point type in language approved by the State Board of Insurance. All statements in the application shall in the absence of fraud be regarded as representations and not warranties. . . .

Revised Law

Sec. 884.354. LIFE INSURANCE POLICY FORMS; INCONTESTABILITY. (a) Each life insurance policy issued by a stipulated premium company must state on the front page:

(1) the amount of death benefit to be paid; and  
(2) the circumstances or conditions under which the benefit is to be paid.

(b) Each condition of a life insurance policy must be stated in the policy.

(c) A life insurance policy must provide that a policy in force for two years becomes incontestable, except for nonpayment of premiums, on the second anniversary of the date of issuance, if the insured does not die before that date.

(d) A life insurance policy must provide that if the age of the insured is misstated, the amount of insurance is the amount that the premium paid would have purchased if the age had been stated correctly, based on premium rates in effect when the insured dies. (V.T.I.C. Art. 22.13, Sec. 1(a) (part).)

Source Law

(a) Every policy of life insurance issued by a stipulated premium company shall state on the front page the amount of death benefit to be paid, and the circumstances or conditions under which it shall be paid. . . . All conditions of the policy must be stated therein. Each policy must provide that it shall be incontestable, after having been in force during the lifetime of the insured for a period of two (2) years from date of issue, except for nonpayment of

premiums. It shall also provide that in case the age of the insured is misstated, the amount of insurance shall be that which the premium actually paid would purchase at the correct age, based on premium rates in force at the time of the death of the insured. . . .

Revised Law

Sec. 884.355. DESIGNATION OF BENEFICIARIES. The designation of a beneficiary under a life insurance policy issued by a stipulated premium company must comply with Subchapter B, Chapter 1103, and Subchapter A, Chapter 1104. (V.T.I.C. Art. 22.13, Sec. 4.)

Source Law

Sec. 4. The designation of all beneficiaries under policies issued by stipulated premium companies shall comply with the provisions of Art. 3.49-1 and Art. 3.49-2 of Chapter 3 of this Code.

Revised Law

Sec. 884.356. LIFE INSURANCE BENEFIT REDUCTIONS OR INCREASES. (a) A life insurance policy may provide for reduced benefits if the insured:

- (1) dies or is injured while engaged in:
  - (A) military, naval, or aerial service or aerial flight during peace or war; or
  - (B) a hazardous occupation specified in the policy; or
- (2) dies by the insured's own hand, regardless of whether the insured is sane or insane.

(b) The front page of a life insurance policy must call attention to any reduction or exclusion of benefits provided by the policy. The circumstances or conditions under which the reduction or exclusion applies must be stated plainly in the policy.

(c) If a policy that provides natural death benefits contains a provision for reducing the greatest death benefit provided by the policy for a specified insured for a reason other than a reason specified by Subsection (a):

- (1) the reduced death benefit for the insured must at all times when the reduction is in effect equal or exceed 120 percent of the total premium paid on that policy by the insured; and
- (2) the reduction must end before the fifth anniversary of the date the policy is issued.

(d) Subsection (c) does not apply to a life insurance policy on which the reduction of the death benefit does not apply at the time of the death of the insured.

(e) If a life insurance policy provides for an increase of the initial amount of the death benefit for a specified insured one or more times during the first five years of the policy, the amount of death benefit for the insured must at all times during the period of the increasing benefit equal at least 120 percent of the premiums paid on that policy by the insured during the period of the increase.

(f) Subsection (e) does not apply to a life insurance policy that has been in force for more than five years from the date the policy is issued.

(g) This section does not apply to a family group life insurance policy described by Section 884.451(b). (V.T.I.C. Art. 22.13, Sec. 5.)

#### Source Law

Sec. 5. A. Any policy may provide for reduced benefits when death or injury occurs while the insured is engaged in military, naval, aerial service or aerial flight in time of peace or war; or in case of death of the insured by his own hand while sane or insane; or while engaged in certain hazardous occupations to be named in the policy. Attention shall be called on the front page of the policy to any reduction or exclusion of benefits provided in any life policy, and the circumstances or conditions under which reduction or exclusion of benefits are applicable shall be plainly stated in the policy.

B. In the event a policy providing natural death benefits shall contain a provision for reduction (other than for the specific reductions enumerated and authorized by Subparagraph A of Section 5 of this Article 22.13) of the highest or ultimate death benefit stated in such policy for a specified insured, such reduced death benefit for such specified insured shall at all times during the period of time such reduction in death benefit is in effect equal at least 120 percent of the total premium then paid upon such policy by such specified insured; the period of any such reduced benefit (other than as enumerated and authorized by

Subparagraph A of Section 5 of this Article 22.13) shall not exceed five years from issue date. This Subparagraph A of Section 5 of this Article 22.13 shall not be applicable, however, to any policy of life insurance upon which the reduction of the death benefit is not applicable at the time of the death of such specified insured.

C. In the event a policy of life insurance shall provide, during any of the first five years of such policy, for an increase in the death benefit whereby the initial amount of the death benefit for a specified insured shall be increased one or more times during such five-year period, such amount of death benefit for any such specified insured shall at all times during the period or periods of such increasing benefit equal at least 120 percent of the premiums paid on such policy by such specified insured during the period of such increase. This Subparagraph C of this Section 5 of this Article 22.13 shall not be applicable, however, to any policy of life insurance after it has been in force for more than five years from the policy issue date.

D. The provisions of Section 5 of this Article 22.13 shall not be applicable to family group life policies as the term "family group life policies" is defined in Section 1(b) of Article 22.11 of this Insurance Code.

E. The provisions of this Section 5 of this Article 22.13 shall not apply to health and accident policies.

#### Revisor's Note

(1) Subsection B, Section 5, V.T.I.C. Article 22.13, provides an exception to "[t]his Subparagraph A of Section 5 of this Article 22.13." It is clear that the exception applies to Subsection B, rather than Subsection A, and the revised law is drafted accordingly.

(2) Subsection E, Section 5, V.T.I.C. Article 22.13, provides that Section 5 does not apply to health and accident policies. The revised law omits that provision because

the section by its own terms applies only to life insurance policies.

Revised Law

Sec. 884.357. FORM APPROVAL. The approval of a form of an insurance policy issued by a stipulated premium company is governed by Article 3.42. (V.T.I.C. Art. 22.13, Secs. 1(c), 2(c).)

Source Law

[Sec. 1]

(c) The approval of life policy forms shall be made in accordance with the provisions of Article 3.42 of Chapter 3 of this Code.

[Sec. 2]

(c) The approval of health, accident, sickness and hospitalization policy forms shall be made in accordance with the provisions of Article 3.42 of Chapter 3 of this Code.

[Sections 884.358-884.400 reserved for expansion]

SUBCHAPTER I. AUTHORITY TO ISSUE OTHER COVERAGE

Revised Law

Sec. 884.401. AUTHORITY CUMULATIVE. The authority provided by this subchapter is in addition to the authority provided by this chapter for the issuance of other insurance coverage. (V.T.I.C. Art. 22.23A, Sec. 1 (part).)

Source Law

Art. 22.23A

Sec. 1. In addition to the types of insurance coverages otherwise authorized in this chapter for issuance by a stipulated premium company, . . . .

Revised Law

Sec. 884.402. ADDITIONAL COVERAGE. A stipulated premium company that, at the time it begins to issue coverages under this subchapter, possesses the amounts of capital and unencumbered surplus equal to or greater than the corresponding amounts required for organization of a life and health company under Sections 841.052, 841.054, 841.204, 841.205, 841.301, and 841.302 may, subject to Section 884.403:

(1) issue any kind of life insurance coverage authorized by Chapter 3 or Title 7;

(2) issue any kind of health or accident insurance coverage authorized by Chapter 3; or

(3) issue life insurance coverage through policies without cash surrender values or nonforfeiture values and that exceed \$10,000 on one life. (V.T.I.C. Art. 22.23A, Sec. 1 (part).)

#### Source Law

Sec. 1. . . . each stipulated premium company possessing at the time of commencement of writing coverages under this article, the amount of, or in excess of, the capital and unencumbered surplus required for organization of a life and health company under the provisions of Article 3.02 of this code, may:

(a) issue any type of life, health, or accident coverages authorized by Chapter 3 of this code, . . . ; and

(b) issue life insurance contracts without cash surrender values or nonforfeiture values and which are in excess of \$10,000 on any one life, . . . .

#### Revisor's Note

Section 1, V.T.I.C. Article 22.23A, refers to Article 3.02 and Chapter 3 of the Insurance Code. The pertinent provisions of Article 3.02 are revised as Sections 841.054, 841.204, 841.205, 841.301, and 841.302 of this code. Some of the provisions of Chapter 3 relating to life insurance are revised as Title 7 of this code. The revised law is drafted accordingly.

#### Revised Law

Sec. 884.403. POLICY REQUIREMENTS. (a) A policy issued under Section 884.402(1) or (2) must be reserved and must comply with the law, including rules, applicable to a policy issued by a company authorized to engage in or engaging in the business of insurance under Chapter 841.

(b) A policy of life insurance issued under Section 884.402(3):

(1) must be reserved in accordance with a reserve table adopted by the department as appropriate for that type of policy;

(2) must contain:

(A) on its first page, a notice that the policy does not provide cash surrender values or other paid up



nonforfeiture benefits or loan values; and

(B) provisions for a grace period for the payment of each premium after the first payment during which the policy remains in force; and

(3) may not be approved until the commissioner has adopted the standard of valuation, including an appropriate mortality table and interest rate. (V.T.I.C. Art. 22.23A, Secs. 1(a) (part), (b) (part).)

Source Law

Sec. 1. . . .

(a) [issue any type of life, health, or accident coverages authorized by Chapter 3 of this code,] provided that each policy so issued shall be reserved under the provisions of Chapter 3, and each such policy shall also comply with all other provisions of law and lawful regulations applicable to policies issued by companies licensed or doing business under the provisions of Chapter 3; and

(b) [issue life insurance contracts without cash surrender values or nonforfeiture values and which are in excess of \$10,000 on any one life,] provided that (1) each policy so issued shall be reserved and reserves shall be maintained on such life policies in accordance with any reserve table adopted by the State Board of Insurance as appropriate for this type of policy; (2) no policy form shall be approved until the standard of valuation, including an appropriate mortality table and interest rate, has been adopted by the State Board of Insurance; (3) each policy so issued shall contain a notice on its first page that the policy does not provide cash surrender values, and other paid up nonforfeiture benefits or loan values; and (4) the policy contain provisions for a grace period for the payment of every premium after the first, during which grace period the policy shall remain in force.

Revisor's Note

(1) Section 1(a), V.T.I.C. Article 22.23A, refers to Chapter 3 of the Insurance Code. The pertinent portions of Chapter 3,

relating to authorization of domestic insurance companies subject to appropriate reserve requirements, are revised in Chapter 841. The revised law is drafted accordingly.

(2) Section 1(a), V.T.I.C. Article 22.23A, refers to "regulations" applicable to life, health, or accident policies. The revised law substitutes "rules" for "regulations" because that is the term more commonly used and is the term used by Chapter 2001, Government Code, the administrative procedure law. Also, under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

#### Revised Law

Sec. 884.404. CAPITAL AND SURPLUS REQUIREMENTS. (a) A stipulated premium company that issues any insurance coverage under this subchapter shall maintain at all times the capital and unencumbered surplus required when the stipulated premium company began writing the coverage.

(b) A stipulated premium company that does not comply with this section is considered to be impaired unless it reinsures all insurance coverages written under this subchapter with a company that:

(1) is authorized to engage in the business of insurance in this state under this chapter or Chapter 841 or 882 or is an accident insurance company, health insurance company, or life insurance company authorized to engage in the business of insurance in this state under Chapter 982, as appropriate; and

(2) complies with the requirements prescribed by this subchapter. (V.T.I.C. Art. 22.23A, Sec. 2.)

#### Source Law

Sec. 2. Each stipulated premium company issuing any insurance coverage authorized by Section 1 of this article shall at all times thereafter maintain the capital and unencumbered surplus as was required at the time such stipulated premium company commenced writing coverages under this article. If the stipulated premium company fails to comply with this provision, it shall be deemed and considered as impaired unless it reinsures all insurance coverages written under this article with a company licensed to do business in Texas under the provisions of

Chapter 3, Chapter 11, or Chapter 22,  
provided such assuming company meets all the  
requirements of this article.

Revisor's Note

Section 2, V.T.I.C. Article 22.23A,  
refers to Chapter 3 and Chapter 11 of the  
Insurance Code. The pertinent portions of  
Chapter 3, relating to authorization of  
entities that may provide appropriate  
reinsurance, are revised in Chapters 841 and  
982. Chapter 11 is revised as Chapter 882 of  
this code. The revised law is drafted  
accordingly.

Revised Law

Sec. 884.405. AGENT; LICENSE. (a) An agent may not solicit  
or write any coverage authorized by this subchapter unless the  
agent:

(1) holds a license issued under Chapter 213, Acts of  
the 54th Legislature, Regular Session, 1955 (Article 21.07-1,  
Vernon's Texas Insurance Code); and

(2) is appointed by the stipulated premium company for  
which the agent is soliciting and writing coverage under this  
subchapter.

(b) The commissioner may issue under Chapter 213, Acts of  
the 54th Legislature, Regular Session, 1955 (Article 21.07-1,  
Vernon's Texas Insurance Code), a license for an agent to solicit  
and write any coverage authorized by this subchapter for a  
stipulated premium company. Chapter 213, Acts of the 54th  
Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's  
Texas Insurance Code), applies to the stipulated premium company  
as if the company were a legal reserve life insurance company.  
(V.T.I.C. Art. 22.23A, Secs. 3, 4.)

Source Law

Sec. 3. Notwithstanding any other  
provision of this code to the contrary, the  
State Board of Insurance is hereby authorized  
to license agents under Chapter 213, Acts of  
the 54th Legislature, 1955 (Article 21.07-1,  
Vernon's Texas Insurance Code), to solicit  
and write any coverage authorized by this  
article on behalf of stipulated premium  
companies. Wherever in Chapter 213, Acts of  
the 54th Legislature, 1955 (Article 21.07-1,  
Vernon's Texas Insurance Code), the terms  
"legal reserve life insurance company,"  
"legal reserve company," "insurance carrier,"

or "insurer" are used they shall include stipulated premium companies for the limited purposes of issuing coverage under this article.

Sec. 4. No agent shall solicit or write any coverage authorized by this article unless such agent holds a license under Chapter 213, Acts of the 54th Legislature, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), and is appointed by the company for which the agent is soliciting and writing coverage under this article.

#### Revised Law

Sec. 884.406. ANNUAL STATEMENT. A stipulated premium company that issues or maintains in force policies under this subchapter shall file the annual statement required by Section 884.256 not later than March 1 of each year. (V.T.I.C. Art. 22.23A, Sec. 5.)

#### Source Law

Sec. 5. Any stipulated premium company issuing coverages provided in this article or maintaining policies in force that were issued under this article shall file its annual statement on or before March 1 of each calendar year.

#### Revised Law

Sec. 884.407. RELATIONSHIP OF SUBCHAPTER TO OTHER PROVISIONS OF CHAPTER. (a) Section 884.305 and Subchapter J do not apply to a policy issued under this subchapter.

(b) The provisions of Sections 884.309 and 884.351 relating to the adjustment of premiums do not apply to a life insurance policy issued under this subchapter.

(c) The department may not consider losses sustained by a stipulated premium company on a policy issued under this subchapter when applying Section 884.206 or 884.308 to the company's life insurance policies not issued under this subchapter. (V.T.I.C. Art. 22.23A, Sec. 7.)

#### Source Law

Sec. 7. The readjustment of premium provisions contained in Section 3, Article 22.13, of this code shall not be applicable to life policies issued under this article. The State Board of Insurance shall not take into account losses sustained by a stipulated

premium company on policies issued under this article in applying the provisions of Section 2, Article 22.13, of this code to stipulated premium companies for its life insurance business not issued under the provisions of this article. The provisions of Article 22.11 of this code shall not apply to policies written pursuant to this article.

#### Revised Law

Sec. 884.408. IMPLEMENTATION OF SUBCHAPTER. The commissioner shall adopt reasonable rules to implement this subchapter, including:

- (1) rules adopting mortality and reserving tables required by Sections 884.403(b)(1) and (3); and
- (2) reasonable and necessary rules for the content, form, and style of the notice and terms of the grace period required under Section 884.403(b)(2). (V.T.I.C. Art. 22.23A, Sec. 8.)

#### Source Law

Sec. 8. The State Board of Insurance shall adopt reasonable rules to implement this article, including but not limited to adoption of the mortality and reserving tables provided in Subsections (b)(1) and (b)(2) of Section 1 of this article and adoption of reasonable and necessary rules relating to the content, form, and style of the notice provisions under Subsection (b)(3) and terms of the grace period required under Subsection (b)(4), Section 1.

#### Revisor's Note

Section 8, V.T.I.C. Article 22.23A, refers to "including but not limited to." "[B]ut not limited to" is omitted as unnecessary because Section 311.005(13), Government Code (Code Construction Act), applicable to the revised law, provides that "includes" and "including" are terms of enlargement and not of limitation and do not create a presumption that components not expressed are excluded.

#### Revisor's Note

(End of Subchapter)

Section 6, V.T.I.C. Article 22.23A,

requires the payment of premium taxes "in like manner as a company chartered and doing business under the provisions of Chapter 3 of this code." The revised law omits Section 6 for the reason stated in Revisor's Note (2) to Section 884.002. The omitted law reads:

Sec. 6. Any stipulated premium company issuing coverages provided in this article or maintaining policies in force that were issued under this article shall pay premium taxes on such business in like manner as a company chartered and doing business under the provisions of Chapter 3 of this code.

[Sections 884.409-884.450 reserved for expansion]

#### SUBCHAPTER J. RESERVES

##### Revised Law

Sec. 884.451. RESERVES ON INDIVIDUAL AND GROUP LIFE INSURANCE POLICIES. (a) A stipulated premium company shall maintain reserves on each of its individual life insurance policies in accordance with the reserve standard adopted by the company and approved by the department. The standard must provide reserves that in the aggregate are equal to at least the reserve amounts computed using the 1956 Chamberlain Reserve Table with interest that does not exceed 3-1/2 percent per year. A stipulated premium company may use the 1956 Chamberlain Reserve Table.

(b) A stipulated premium company shall maintain reserves on family group life insurance policies on which a group premium is charged and under which the amount of a benefit depends on the sequence of deaths. The amount of the reserves must be equal to the reserves that would be required under Subsection (a) on individual life insurance policies on the lives of:

(1) the two oldest living members of the family group, with the amount of insurance for those two members determined assuming that the elder of the two will die first; or

(2) the living members of the family group, with the amount of insurance for each member of the family group determined assuming that each member will die first.

(c) A stipulated premium company may select the method to be used to compute the amount of the reserves under Subsection (b). (V.T.I.C. Art. 22.11, Sec. 1.)

##### Source Law

Art. 22.11

Sec. 1. (a) Each stipulated premium individual life policy shall be reserved and

each stipulated premium company shall maintain reserves on such individual life policies in accordance with any reserve standards adopted by the company and approved by the State Board of Insurance, provided such reserves are at least equal, in the aggregate, to reserves based on the 1956 Chamberlain Reserve Table with interest not to exceed three and one-half per cent (3 1/2%) per annum. Any stipulated premium company is hereby authorized to use the 1956 Chamberlain Reserve Table.

(b) Family group life policies, upon which a group premium is charged and under which there is a varying benefit dependent upon the sequence of deaths, shall be reserved and each stipulated premium company shall, at the election of the stipulated premium company, maintain reserves on such family group policies in either one of the following methods of calculation: (1) The reserves shall be equal to the reserves which would be required, in accordance with the provisions of this Section on individual life policies on the lives of the then living two (2) oldest members of each such family group; the amount of insurance for such two (2) members shall be based on the assumption that the elder of such members will be the first to die; or (2) The reserves shall be equal to the reserves which would be required, in accordance with the provisions of this Section on individual life policies on the lives of the then living members of such family group; the amount of insurance for each such member of the family group shall be based on the assumption that each such member will be the first to die. Each such stipulated premium company shall be permitted to select the method it shall use to calculate such reserves.

#### Revised Law

Sec. 884.452. RESERVES ON ACCIDENT AND HEALTH INSURANCE POLICIES. A stipulated premium company shall maintain reserves on each accident and health insurance policy issued by the company in the manner required of a company authorized to issue that type of policy under Chapter 841. (V.T.I.C. Art. 22.11, Sec. 2

(part).)

Source Law

Sec. 2. All health, accident and sickness policies shall be reserved by the stipulated premium company and each stipulated premium company shall maintain reserves on such policies in the same manner as is required by the companies writing such coverage under the provisions of Chapter 3 of the Insurance Code of Texas . . . .

Revisor's Note

(1) Section 2, V.T.I.C. Article 22.11, refers to the reservation of a health, accident and sickness insurance policy as required under "Chapter 3 of the Insurance Code of Texas." The provisions of Chapter 3, relating to domestic accident and health insurance companies that are subject to the appropriate reserve requirements are revised as Chapter 841 of this code. The revised law is drafted accordingly.

(2) Section 2, V.T.I.C. Article 22.11, provides exceptions to the reservation requirements for accident and health insurance policies issued by a stipulated premium company in 1985 or 1986. The revised law omits those provisions as executed. The omitted law reads:

. . . except that:

(1) for policies issued during the calendar year 1985, only one-third of the unearned premium reserve shall be required to be maintained during the first policy year; and

(2) for policies issued during the calendar year 1986, only two-thirds of the unearned premium reserve shall be required to be maintained during the first policy year.

Revised Law

Sec. 884.453. DEFICIENCY RESERVE. (a) On the effective date of a direct reinsurance agreement under Subchapter L, the stipulated premium company shall compute:

(1) the amount of the reserves required under this chapter on the policies assumed under the agreement; and

(2) the amount of the net assets transferred to the



stipulated premium company under the agreement.

(b) If the amount of the net assets transferred is not equal to the amount of the required reserve, the difference shall be designated and carried as a deficiency reserve. The deficiency reserve does not create insolvency of the stipulated premium company if the company, beginning with the first calendar year that begins after the effective date of the direct reinsurance agreement, reduces the computed deficiency amount, including interest at the assumed rate, by at least 10 percent during each year as computed on December 31 of that year. The reduction must result in the deficiency reserve being eliminated on December 31 of the year for which the 11th annual statement is filed after the company enters into the direct reinsurance agreement. The required reduction in the deficiency reserve may not exceed the cumulative aggregate amount of 10 percent a year.

(c) If in any year a stipulated premium company has not reduced its deficiency reserve as required by Subsection (b), the company's board of directors by appropriate action shall increase premium rates by advancing the age of each insured at the date the insured's policy is issued or otherwise equitably adjust premium rates to correct that failure. The board shall take that action not later than the 30th day after the date the reserves are computed.

(d) If the board does not comply with Subsection (c), the stipulated premium company is considered to be insolvent for purposes of this chapter. (V.T.I.C. Art. 22.11, Sec. 3.)

Source Law

Sec. 3. (a) On all policies of a Chapter 14 company assumed under a direct reinsurance agreement as in this Chapter provided by a stipulated premium company, such stipulated premium company shall at the effective date of such reinsurance agreement calculate the amount of the required reserves in accordance with the provisions of this Article and shall also calculate and determine the amount of the net assets transferred to the stipulated premium company under such reinsurance agreement. In the event the net assets of the Chapter 14 company are insufficient to equal the amount of the required reserve, the difference shall be designated and carried as a deficiency reserve. Such deficiency reserve shall be allowed without creating the insolvency of the stipulated premium company, but the stipulated premium company must reduce said

deficiency so determined by at least ten per cent (10%) thereof during each year following the date of the reinsurance agreement, but commencing such reduction as to the next succeeding annual statement filing date so that at the date of the eleventh annual statement filing date after the effective date of said reinsurance agreement, the deficiency reserve will be fully paid and satisfied, together with assumed rate of interest thereon; provided, however, that such required reduction in the deficiency reserve shall never exceed the cumulative aggregate amount of ten per cent (10%) per annum.

(b) In the event the annual required reduction of the deficiency reserve is not accomplished as of December 31st of each year involved, the Board of Directors of the stipulated premium company shall by appropriate action increase rates by advancing the age of the insureds at issue date, or by some other equitable rate adjustment, so as to correct the failure to reduce the amount of the deficiency. In the event of the failure of the Board of Directors of the stipulated premium company to so act within thirty (30) days following the calculation of reserves, the stipulated premium company shall be dealt with in accordance with this Chapter as if it were insolvent.

#### Revisor's Note

Section 3(a), V.T.I.C. Article 22.11, refers to the reduction of the deficiency reserve by the "annual statement filing date." It was probably intended that the provision refer to the date for which the statement was prepared, December 31, rather than the filing date. V.T.I.C. Article 22.06, revised in relevant part as Section 884.256, provides that a company's annual statement is prepared for a calendar year and shows the condition of the company as of December 31 of that year. An annual statement may be filed on any day before April 1 (see Section 884.256) or, if a

company writes coverage under Article 22.23A, revised as Subchapter I, not later than March 1 (see Section 884.406). Section 3(b), V.T.I.C. Article 22.11, refers to December 31 and, read with Section 3(a), supports the idea that that date was intended in Section 3(a). For those reasons December 31 is substituted for "annual statement filing date" in the revised law.

Revised Law

Sec. 884.454. COMMISSIONER'S COMPUTATION OF RESERVE LIABILITY. (a) As soon as practical each year, the department shall compute the reserve liability of each stipulated premium company that has outstanding insurance policies.

(b) To make the computations, the department:

(1) shall use the net premium basis in accordance with the reserve table and interest rate adopted by the stipulated premium company and approved by the commissioner; and

(2) may use group methods and approximate averages for fractions of a year.

(c) The reserve liability may be computed on not more than a one-year preliminary term with allowance for any deficiency reserve under Section 884.453. (V.T.I.C. Art. 22.11, Sec. 4.)

Source Law

Sec. 4. The State Board of Insurance, as soon as practical, in each year, shall compute or cause to be computed the reserve liability of each stipulated premium company which has outstanding policies of insurance. In making such computations, the said Board may use group methods and approximate averages for fractions of a year or otherwise. Such reserve liability shall be computed upon the net premium basis in accordance with the reserve table and interest rate adopted by the stipulated premium company and approved by the State Board of Insurance and such reserve liability may be calculated on not more than a one-year preliminary term basis with allowance for the permissive deficiency reserve provided for in this Chapter 22.

Revised Law

Sec. 884.455. REQUIRED SECURITIES. The commissioner shall require that a stipulated premium company have securities of the class and character required by Article 3.39 in the amount of the

reserve liability computed for the company under Section 884.454 less any deficiency reserve under Section 884.453 after all the debts and claims against the company and the minimum capital required by this chapter have been applied. (V.T.I.C. Art. 22.11, Sec. 5.)

#### Source Law

Sec. 5. Having determined the required reserve on all policies in force, but excluding the permissive deficiency reserves authorized by this Chapter 22, the State Board of Insurance shall require that the stipulated premium company have in securities of the class and character required by the laws of this state the amount of said reserves less the permissive deficiency reserves after all the debts and claims against it and the minimum capital required by this Chapter have been provided.

#### Revisor's Note

Section 5, V.T.I.C. Article 22.11, refers to "securities of the class and character required by the laws of this state." While there is no provision in Chapter 22 that expressly relates to the requirement for those securities, V.T.I.C. Article 3.39, which regulates the authorized investments for certain types of insurers, is made applicable to stipulated premium companies by Section 1, V.T.I.C. Article 22.18, revised in relevant part as Section 884.002, and is the only statutory provision applicable to stipulated premium companies that contains specific requirements concerning the class and character of a reserve's securities. The revised law is drafted accordingly.

#### Revised Law

Sec. 884.456. INCREASE OF RESERVES. (a) If a stipulated premium company does not have the reserves required by this subchapter and the minimum capital required under this chapter, the company's board of directors by appropriate action shall increase premium rates on policies in force by advancing the age of each insured at the date the insured's policy is issued or otherwise equitably adjust premium rates to correct the reserve inadequacy. The board shall take that action not later than the 30th day after the date the reserves are computed.

(b) If the board of directors does not comply with Subsection (a), the stipulated premium company is treated as if the company had not corrected an impairment under Section 884.205(a). (V.T.I.C. Art. 22.11, Sec. 6.)

Source Law

Sec. 6. In the event the stipulated premium company does not have the required reserves, less any permissive deficiency reserve, plus the minimum capital required by this Chapter, the Board of Directors of the stipulated premium company shall by appropriate action increase rates on policies in force by advancing the age of the insureds at issue date or by some other equitable rate adjustment so as to correct such reserve inadequacy. In the event of the failure of the Board of Directors of the stipulated premium company to so act within thirty (30) days following the calculation of reserves as of the date in this Chapter provided, the stipulated premium company shall be dealt with in accordance with this Chapter as if it were insolvent under the provisions of Art. 22.12 of this Chapter.

Revisor's Note

Section 6, V.T.I.C. Article 22.11, refers to "the required reserves, less any permissive deficiency reserve." The revised law uses the phrase "reserves required by this subchapter." Those reserves do not include the deficiency reserve.

[Sections 884.457-884.500 reserved for expansion]

SUBCHAPTER K. DIRECT REINSURANCE AGREEMENTS

Revised Law

Sec. 884.501. DIRECT REINSURANCE AGREEMENTS BETWEEN STIPULATED PREMIUM COMPANIES. (a) Stipulated premium companies organized under this chapter may enter into a total or partial direct reinsurance agreement if the company assuming the policies under the agreement is authorized to transact the kinds of insurance provided by those policies.

(b) Before a stipulated premium company may enter into a total direct reinsurance agreement:

(1) the company must submit the agreement to the department; and

(2) the department must approve the agreement as fully protecting the interests of all the holders of policies being

assumed.

(c) A partial direct reinsurance agreement shall be filed with the department before the effective date of the agreement. (V.T.I.C. Art. 22.19, Secs. 1, 4 (part).)

Source Law

Art. 22.19

Sec. 1. Total or partial direct reinsurance agreements may be made and entered into between stipulated premium companies chartered under the provisions of this Chapter provided: (a) The assuming company is authorized to transact the kinds of insurance provided by the policies assumed; and (b) No total direct reinsurance agreement shall be made until the contract therefor has been submitted to and approved by the State Board of Insurance as protecting fully the interests of all the policyholders assumed.

Sec. 4. All partial direct reinsurance agreements shall be filed with the State Board of Insurance prior to the effective date of said agreement and . . . .

Revised Law

Sec. 884.502. DIRECT REINSURANCE AGREEMENT WITH LEGAL RESERVE COMPANY. (a) A stipulated premium company may enter into a total or partial direct reinsurance agreement with a legal reserve life insurance company authorized to engage in the business of insurance in this state.

(b) Before a reinsurance agreement under this section may take effect, it must be:

(1) approved by a majority vote of the board of directors of each company;

(2) submitted to the department; and

(3) approved by the department as complying with Section 884.503 or 884.504, as applicable. (V.T.I.C. Art. 22.19, Sec. 2 (part).)

Source Law

Sec. 2. Any stipulated premium company may enter into total or partial direct reinsurance agreements with any legal reserve life insurance company lawfully doing business in this state upon compliance with the following terms and conditions:

(a) Such reinsurance agreement must be approved by a majority vote of the respective Boards of Directors of the respective companies parties thereto.

. . .

(d) Each such reinsurance agreement shall be submitted in advance to and approved by the State Board of Insurance as to compliance with the provisions of this Section of this Art. 22.19 prior to the same becoming effective.

#### Revised Law

Sec. 884.503. DIRECT REINSURANCE OF ACCIDENT OR HEALTH INSURANCE POLICIES. (a) In the direct reinsurance of a stipulated premium accident or health insurance policy under Section 884.502, the company assuming the policy under the agreement must assume the exact obligations of the policy.

(b) If a policy is non-cancellable or guaranteed renewable, the assuming company may include in the assumption certificate a premium redetermination clause instead of the clause required by Section 884.352. (V.T.I.C. Art. 22.19, Sec. 2 (part).)

#### Source Law

Sec. 2. [Any stipulated premium company may enter into total or partial direct reinsurance agreements with any legal reserve life insurance company lawfully doing business in this state upon compliance with the following terms and conditions:]

. . .

(b) In the event of the direct reinsurance of health, accident or sickness policies, the assuming company must assume the exact policy obligations of the stipulated premium policies; in the event the stipulated premium policy is non-cancellable or guaranteed renewable the assuming company may include in its assumption certificate a premium redetermination clause in lieu of the clause contained in the policy by reason of Art. 22.13 of this Chapter.

#### Revised Law

Sec. 884.504. DIRECT REINSURANCE OF CERTAIN POLICIES. (a) A reinsurance agreement authorized by Section 884.502 for the direct reinsurance of life insurance policies or a combination of

life and accident or health insurance policies must contain provisions that comply with this section.

(b) If the legal reserve life insurance company is the reinsurer and issues an assumption certificate providing whole life coverage for the life benefit, the policyholder is not entitled to receive the policyholder's individual reserve in cash by surrendering the assumption certificate.

(c) If the reserves and premium under the stipulated premium policy are inadequate to provide whole life coverage under the legal reserve assumption certificate and a term coverage assumption is made available, each affected policyholder must be allowed to select:

(1) payment in cash of the amount of the individual reserve, reduced by the deficiency reserve, if any, to the policyholder on surrender of the policy;

(2) an assumption certificate of another stipulated premium company engaging in the business of insurance under this chapter; or

(3) the legal reserve life insurance company's assumption certificate for term coverage that is renewable for the life of the insured without evidence of insurability and the rate for which is based on the legal reserve table selected by the assuming company at the attained age of the insured on the date of the renewal increased by an appropriate expense factor.

(d) To exercise the option described by Subsection (c)(1) the policyholder must request that option not later than the 60th day after the date that the notice of the options available to the policyholder is mailed. A policyholder is entitled to exercise the option under Subsection (c)(2) or (3) not later than the 60th day after the date the assumption certificate of the legal reserve life insurance company is mailed to the policyholder.

(e) If the legal reserve life insurance company makes term coverage available, the company shall use each policyholder's individual reserve, less the amount of the deficiency, if any, as:

(1) a reserve credit to permit the legal reserve assumption certificate to be backdated to the earliest date the reserve credit allows; or

(2) an annuity to reduce the required premium during the initial period of the term coverage. (V.T.I.C. Art. 22.19, Sec. 2 (part).)

#### Source Law

Sec. 2. [Any stipulated premium company may enter into total or partial direct reinsurance agreements with any legal reserve life insurance company lawfully doing



business in this state upon compliance with the following terms and conditions:]

. . .

(c) In the event of the direct reinsurance of life policies or a combination of life and health, accident or sickness, such reinsurance agreement shall contain provisions in compliance with the following:

(1) In the event the assuming legal reserve company issues an assumption certificate providing whole life coverage for the life benefit, the policyholder shall not have the right to receive his individual reserve in cash by surrendering the assumption certificate;

(2) In the event the reserves and premium under the stipulated premium policy are inadequate to provide whole life coverage under the legal reserve assumption certificate and a term coverage assumption is afforded, the following options shall be afforded to each policyholder affected thereby so that he may select any one of the following: (a) The amount of the individual reserve, reduced by the deficiency reserve, if any, shall be paid in cash to the legal owner and holder of the policy upon its surrender and if the same be requested within sixty (60) days following mailing of notice of the options afforded to the policyholder; (b) An assumption certificate of another stipulated premium company chartered and doing business pursuant to the provisions of this Chapter; or (c) The legal reserve company's certificate of assumption predicated upon term coverage, but which term coverage shall be renewable for the life of the insured without evidence of insurability and the rate for which shall be based on the legal reserve table selected by the assuming company at the attained age of the insured at the date of the renewal increased by an appropriate expense factor. Each affected policyholder shall have the right to exercise his option within sixty (60) days following the date the assumption certificate of the legal reserve company is mailed to the policyholder.

In the event the term coverage is afforded by the legal reserve company, the individual reserve, less the amount of the deficiency, if any, of each policyholder shall be used by the assuming company either: (a) As a reserve credit to permit the legal reserve assumption certificate to be back dated as far as the reserve credit will permit; or (b) As an annuity to reduce the required premium during the initial period of the term coverage.

. . .

#### Revised Law

Sec. 884.505. EFFECT OF TOTAL DIRECT REINSURANCE AGREEMENT.

(a) A stipulated premium company that enters into a total direct reinsurance agreement under Section 884.501 or 884.502 under which it is the ceding company shall promptly surrender its certificate of authority to the department.

(b) The stipulated premium company's shareholders and board of directors shall effect the company's dissolution. (V.T.I.C. Art. 22.19, Sec. 3.)

#### Source Law

Sec. 3. In the event of a total direct reinsurance agreement under the provisions of Section 1 or Section 2 of this Art. 22.19, the reinsured stipulated premium company shall forthwith surrender its certificate of authority to the State Board of Insurance and proceed by action of its stockholders and Board of Directors to effect its dissolution.

#### Revised Law

Sec. 884.506. ASSUMPTION CERTIFICATE. The company assuming a policy under a partial direct reinsurance agreement shall issue to the holder of the assumed policy an assumption certificate to be attached to the policy. (V.T.I.C. Art. 22.19, Sec. 4 (part).)

#### Source Law

Sec. 4. [All partial direct reinsurance agreements shall be filed with the State Board of Insurance prior to the effective date of said agreement and] the assuming company shall furnish an assumption certificate to the policyholder to be attached to his policy.

[Sections 884.507-884.550 reserved for expansion]

SUBCHAPTER L. DIRECT REINSURANCE AGREEMENTS WITH MUTUAL  
ASSESSMENT COMPANIES

Revised Law

Sec. 884.551. DEFINITIONS. In this subchapter:

(1) "Mutual assessment company" means any entity regulated under Chapter 887 or 888.

(2) "Net assets" means a company's funds that are available for the payment of the company's obligations in this state, including uncollected premiums that are not more than three months past due, after the deduction of all unpaid losses and claims, claims for losses, and all other debts. (V.T.I.C. Art. 22.15, Secs. 1 (part), 10.)

Source Law

Art. 22.15

Sec. 1. Any burial association, local mutual aid association, state-wide mutual assessment corporation, or any other similar concern by whatsoever name or class designated, that is regulated by the provisions of Chapter 14 of this Code, . . . .

Sec. 10. The words "net assets" as used in this Chapter shall mean the funds of the company available for the payment of its obligations in this state, including uncollected premiums not more than three months past due after deduction from such funds all unpaid losses and claims and claims for losses and all other debts.

Revisor's Note

Section 1, V.T.I.C. Article 22.15, provides that Article 22.15 is applicable to a "burial association, local mutual aid association, state-wide mutual assessment corporation, or any other similar concern by whatsoever name or class designated, that is regulated by the provisions of Chapter 14 of this Code." There are numerous references in that article to a company that is regulated under Chapter 14 of the Insurance Code. The revised law adds a definition of "mutual assessment company," the term used by Chapter 14, as a drafting convenience. Chapter 14 is

revised as Chapters 887 and 888 of this code,  
and the revised law is drafted accordingly.

Revised Law

Sec. 884.552. AUTHORITY TO CONTRACT. A mutual assessment company may enter into a direct reinsurance agreement with a stipulated premium company in accordance with this subchapter. (V.T.I.C. Art. 22.15, Sec. 1 (part).)

Source Law

Sec. 1. [Any burial association, local mutual aid association, state-wide mutual assessment corporation, or any other similar concern by whatsoever name or class designated, that is regulated by the provisions of Chapter 14 of this Code,] may directly reinsure itself into a stipulated premium company chartered under the provisions of this Chapter.

Revised Law

Sec. 884.553. REINSURANCE AGREEMENT. (a) A reinsurance agreement under this subchapter must provide that the stipulated premium company is to assume the policies of the mutual assessment company.

(b) The reinsurance agreement must provide for the computation, on the effective date of the agreement, of:

(1) the amount of the net assets, including mortuary and expense funds, of the mutual assessment company that is to be transferred to the stipulated premium company after the payment of all liabilities;

(2) the amount of the required reserves to be established under the reserve and interest table used in the agreement; and

(3) the amount of any deficiency reserve resulting from the computation of Subdivisions (1) and (2).

(c) The deficiency reserve is subject to Section 884.453, except that instead of reducing the deficiency as required by that section, the reinsurance agreement may provide for immediate premium rate adjustments, in accordance with accepted actuarial practices and standards, to eliminate the deficiency at the time of reinsurance or during the period allowed for eliminating the deficiency under Section 884.453.

(d) For purposes of computing the reserves of members of a mutual assessment company, the total net assets of the company shall be apportioned among the members assessed. The percentage of the total amount of the net assets allotted to a member is computed by dividing the amount of the required reserve for that member insured under the reinsurance agreement by the total

amount of the required reserve for all members under the agreement.

(e) The reinsurance agreement must provide that each policyholder who is dissatisfied with the agreement and who does not want to accept the assumption certificate offered by the stipulated premium company is entitled to receive the amount of the reserve under the policyholder's policy reduced by the amount of any deficiency reserve applicable to the policy. The policyholder must make a written request for that option to the stipulated premium company not later than the 60th day after the date the assumption certificate is mailed. (V.T.I.C. Art. 22.15, Sec. 6 (part).)

Source Law

Sec. 6. Such reinsurance agreement shall provide that the stipulated premium company will assume the policies of the company or association regulated by the provisions of Chapter 14 of this Act subject to the provisions of this Chapter. . . . The agreement shall also provide for the calculation at the effective date of such reinsurance agreement of the following: (a) The amount of the net assets, both mortuary and expense funds, of the company or association regulated under the provisions of Chapter 14 of this Code, which are to be transferred to the stipulated premium company after the payment of all liabilities; and (b) The amount of the required reserves to be established under the reserve and interest table used in such reinsurance agreement; and (c) The amount of the deficiency reserve, if any, resulting from the calculations of items (a) and (b) of this Section 6.

Such deficiency reserve shall be permitted in accordance with the provisions of Art. 22.11 of this Chapter, but must thereafter be reduced in compliance with said Art. 22.11, or said reinsurance agreement may provide for immediate rate adjustments, in accordance with accepted actuarial practices and standards, so as to eliminate said deficiency at the time of reinsurance or during the period allowed in Art. 22.11 for curing of the said reserve deficiency. The sum total of the net assets of the company or association regulated by the provisions of

Chapter 14 of this Code shall be apportioned for reserve calculation purposes among the members assessed as follows: The percentage of the whole of the net assets allotted to any individual member shall be calculated with the amount of the required reserve for such individual insured under such reinsurance agreement as the numerator and the total of all of the required reserve for all the members under such reinsurance agreement as the denominator.

Each such reinsurance agreement shall also provide that each policyholder who is dissatisfied with such reinsurance agreement and who does not desire to accept the assumption certificate offered by the stipulated premium company, shall be entitled to receive, if he shall so request in writing to the stipulated premium company within sixty (60) days following the mailing of the assumption certificate, the amount of the reserve under his policy reduced by the deficiency reserve, if any, as applicable to such policy.

#### Revised Law

Sec. 884.554. APPROVAL BY DEPARTMENT. (a) A mutual assessment company's board of directors may determine by a majority vote to submit a proposed direct reinsurance agreement to the members of the company. Before the agreement may be submitted to the members, the board must prepare detailed plans for the reinsurance and must submit the agreement to the department.

(b) If the department determines that the proposed direct reinsurance agreement complies with this chapter, the department shall approve the agreement for submission to the members of the company. (V.T.I.C. Art. 22.15, Sec. 2.)

#### Source Law

Sec. 2. When it shall be determined by a majority vote of the Board of Directors of the company or association regulated by the provisions of Chapter 14 to submit the proposed direct reinsurance agreement to the members of the company or association regulated by the provisions of Chapter 14 of this Code, said Board of Directors shall prepare in detail plans for making such

reinsurance, and such reinsurance agreement shall be submitted to the State Board of Insurance. The State Board of Insurance shall determine whether such reinsurance agreement complies with the provisions of this Chapter, and if such reinsurance agreement be in compliance with the provisions of this Chapter, the State Board of Insurance shall approve the same for submission to the members of the company or association regulated by the provisions of Chapter 14 of this Code.

Revised Law

Sec. 884.555. MEMBERS MEETING; NOTICE. (a) After the department approves a proposed direct reinsurance agreement, the board of directors of the mutual assessment company shall:

(1) call a meeting of the company's members in accordance with the company's bylaws for voting on ratification of the direct reinsurance agreement; and

(2) mail to each member:

(A) a copy of the proposed agreement; and

(B) a copy of the notice of the meeting.

(b) The meeting may not be held before the 16th day after the date on which the copies are mailed under Subsection (a)(2). (V.T.I.C. Art. 22.15, Secs. 3, 4 (part).)

Source Law

Sec. 3. After approval of the State Board of Insurance, the Board of Directors of the company or association regulated by the provisions of Chapter 14 of this Code shall, in accordance with the by-laws, call a meeting of its membership, and shall mail to each member a copy of the proposed direct reinsurance agreement and enclose therewith a copy of the notice of membership meeting to be held not earlier than fifteen (15) days after the date of mailing of the notice and reinsurance agreement.

Sec. 4. Such meeting of the membership shall be held for the purpose of ratification or rejection of the direct reinsurance agreement. . . .

Revised Law

Sec. 884.556. MEMBERS MEETING; PROCEDURES. (a) In a meeting called under Section 884.555, a member may vote in

person, by proxy to whomever the member designates, or by mail.

(b) All votes must be cast by ballot. A two-thirds vote of the members participating in the election is required to ratify the reinsurance agreement.

(c) The person presiding at the meeting shall supervise and direct the procedure of the meeting and shall appoint an adequate number of inspectors to conduct the voting at the meeting.

(d) The inspectors may determine all questions concerning the qualifications of the voters and the verification, canvassing, and validity of the ballots.

(e) At the conclusion of the meeting, the inspectors shall certify under oath the result of the election to the department and to the stipulated premium company that is a party to the proposed agreement. (V.T.I.C. Art. 22.15, Sec. 4 (part).)

#### Source Law

Sec. 4. . . . Members may vote in person, by proxy to whomever the member may designate or by mail. All votes shall be cast by ballot. The Chairman of such meeting shall supervise and direct the method of procedure of said meeting and shall appoint an adequate number of inspectors to conduct the voting at said meeting; said inspectors shall have full power and authority to determine all questions concerning the verification of the ballots, the qualifications of the voters, the canvassing of the ballots and the ascertainment of the validity thereof. At the conclusion of said meeting, the inspectors shall certify under oath the result thereof to the State Board of Insurance and to the assuming stipulated premium company. A two-thirds (2/3rds) majority vote cast by those participating in said meeting in person, by proxy or by ballot shall be sufficient and adequate for the purpose of ratification of such reinsurance agreement.

#### Revised Law

Sec. 884.557. SUBMISSION OF MEETING FACTS TO DEPARTMENT. Not later than the 90th day after the date of the meeting of the members, all facts relating to the meeting, including the accounting of the meeting and the computation of the required reserves, shall be submitted under oath to the department. (V.T.I.C. Art. 22.15, Sec. 7.)



Source Law

Sec. 7. Within ninety (90) days following such membership meeting, all facts in connection therewith, including the accounting thereof and the calculation of the required reserves, shall be submitted under oath to the State Board of Insurance.

Revised Law

Sec. 884.558. EFFECTIVE DATE OF AGREEMENT. A direct reinsurance agreement that is ratified under Section 884.556 takes effect on the date specified in the agreement. (V.T.I.C. Art. 22.15, Sec. 8.)

Source Law

Sec. 8. Such reinsurance contract shall become binding upon both companies parties hereto at the effective date thereof immediately following the ratification by the membership of the company or association regulated under the provisions of Chapter 14 of this Code.

Revised Law

Sec. 884.559. ACTION AFTER AGREEMENT RATIFICATION. (a) After ratification of the reinsurance agreement under Section 884.556, the mutual assessment company shall cease doing business and shall transfer all of its assets to the assuming stipulated premium company.

(b) The stipulated premium company shall assume:

(1) all policy liability in accordance with the reinsurance agreement; and

(2) all other liabilities in accordance with the method of payment of those liabilities.

(c) On transfer of a mutual assessment company's assets:

(1) the company shall promptly surrender its certificate of authority and charter to the department; and

(2) the company's corporate existence ceases.

(V.T.I.C. Art. 22.15, Sec. 5.)

Source Law

Sec. 5. Provided such reinsurance agreement be approved by the members in accordance with the provisions of this Art. 22.15, the company or association regulated by the provisions of Chapter 14 of this Code shall cease to do business and all

of its assets be transferred to the assuming stipulated premium company and thereupon become its sole and exclusive property. All policy liability will be assumed by the stipulated premium company in accordance with the provisions of said reinsurance agreement; all other liabilities shall be assumed by the stipulated premium company in accordance with the method and mode of payment thereof. The company or association regulated by the provisions of Chapter 14 of this Code shall thereafter forthwith surrender its certificate of authority and charter to the State Board of Insurance, which shall dissolve the same, and the company's or association's corporate existence shall cease.

#### Revisor's Note

(1) Section 5, V.T.I.C. Article 22.15, provides that after entering into a reinsurance agreement the mutual assessment company is required to transfer all of its assets to the assuming stipulated premium company and on transfer the assets "become its sole and exclusive property" and the mutual assessment company's existence ceases. The revised law omits the quoted language as unnecessary because title to the property passes on transfer and the property becomes the stipulated premium company's property.

(2) Section 5, V.T.I.C. Article 22.15, refers to the "method and mode" of payment of liabilities. The revised law omits the reference to "mode" because as used in this context it is included within the meaning of "method."

#### Revised Law

Sec. 884.560. ASSUMPTION CERTIFICATE. Immediately after ratification of the reinsurance agreement under Section 884.556, the stipulated premium company shall issue to each member of the mutual assessment company an assumption certificate that states:

- (1) the terms of the assumption; and
- (2) the reserve and interest table under which the policy is assumed. (V.T.I.C. Art. 22.15, Sec. 6 (part).)

#### Source Law

Sec. 6. . . . Immediately following

approval by the membership of such reinsurance agreement, the stipulated premium company shall issue to each such member a certificate of assumption setting forth the terms of the assumption, and the reserve and interest table under which such policy is assumed. . . .

#### Revised Law

Sec. 884.561. ADJUSTMENT OF LIFE INSURANCE PREMIUMS. (a) If the premium charged on a life insurance policy assumed by the stipulated premium company is less than the renewal net premium computed under the reserve standard adopted in the reinsurance agreement, the stipulated premium company shall adjust the premium rate to provide an amount that is at least equal to the renewal net premium based on the age of the insured on the date the policy was issued by the mutual assessment company.

(b) Notwithstanding Subsection (a), if the gross premium charged on a family group policy reinsured by a stipulated premium company is less than the renewal net premium for that policy, the stipulated premium company may choose to not adjust the rate if:

(1) the deficiency reserve of the business of the mutual assessment company is less than 25 percent of the required reserve on the business to be reinsured, including the deficiency premium reserve required by Subdivision (3);

(2) at the time of reinsurance, the gross premium of all family group policies to be reinsured by the stipulated premium company is in the aggregate equal to at least 120 percent of the required net premiums on those family group policies; and

(3) the stipulated premium company maintains on that policy, in addition to any other reserve required by law, a deficiency premium reserve that is equal to the present value, computed using the reserve standard adopted in the reinsurance agreement, of an annuity, the amount of which is equal to the difference between the premium charged and that net premium and the term of which in years is equal to the number of annual premiums for the remainder of the premium paying period.

(c) The deficiency premium reserve required by Subsection (b)(3) is a part of the company's deficiency reserve and shall be reduced in the manner provided by Section 884.453. (V.T.I.C. Art. 22.15, Sec. 9.)

#### Source Law

Sec. 9. In the event the premiums charged on any life policy assumed by the stipulated premium company shall be less than the renewal net premium calculated in

accordance with such reserve standard adopted by the reinsurance agreement, the rate shall be adjusted to an amount at least equal to the renewal net premium calculated in accordance with the reserve standards adopted by such reinsurance agreement based upon the insured's age at issue by the Chapter 14 Company, except that if the gross premium charged upon any family group policy so reinsured by the stipulated premium company is less than such renewal net premium for such policy or contract such rate may at the option of the stipulated premium company be not adjusted provided:

(a) The permissive deficiency reserve of the business of the Chapter 14 Company is less than 25% of the required reserve on such business to be reinsured, including the permissive deficiency premium reserve to be maintained as hereafter in this Section provided;

(b) The gross premium at time of reinsurance by the stipulated premium company of all family group policies is at least equal in the aggregate to 120% of the required net premiums upon such family group policies to be reinsured by the stipulated premium company; and

(c) There shall be maintained on each such policy contract a permissive deficiency premium reserve in addition to all other reserves required by law and for each such policy or contract the permissive deficiency premium reserve shall be the present value, according to such standard, of an annuity, the amount of which shall equal the difference between the premium charged and such net premium and the term of which in years shall equal the number of annual premiums for the remainder of the premium paying period. Such permissive deficiency premium reserve shall be included as a part of such permissive deficiency reserve and shall be reduced in like manner as in this Chapter provided for the permissive deficiency reserve.

Revised Law

Sec. 884.562. APPROVAL OF RATE ADJUSTMENT. A stipulated premium company may not adjust a life insurance premium rate under this subchapter before:

- (1) obtaining the approval of the department; and
- (2) providing notice to the policyholder. (V.T.I.C. Art. 22.15, Sec. 11.)

Source Law

Sec. 11. Any Section or provision of this Act notwithstanding, no life insurance rates may be adjusted without the advanced approval of the State Board of Insurance, on notice to the policyholder.

[Sections 884.563-884.600 reserved for expansion]

SUBCHAPTER M. CONVERSION TO LEGAL RESERVE COMPANY

Revised Law

Sec. 884.601. AUTHORIZATION TO CONVERT. (a) The shareholders of a stipulated premium company that possesses capital in an amount equal to at least \$700,000, unencumbered surplus in an amount equal to at least \$700,000, and sufficient reserves on hand for the company's policies as required under Subchapter C, Chapter 3, may convert the company to a legal reserve company that operates under Chapter 841 by complying with each requirement applicable to a company operating under that chapter.

(b) The department may approve the conversion only after determining that the converting company has complied with the requirements applicable to that company under Subsection (a). (V.T.I.C. Art. 22.20, Sec. 1 (part).)

Source Law

Art. 22.20

Sec. 1. Except as provided by Section 2 of this article, at such time that a stipulated premium company shall be possessed with at least Seven Hundred Thousand Dollars (\$700,000.00) in capital and at least Seven Hundred Thousand Dollars (\$700,000.00) in free and unencumbered surplus and additionally shall have on hand sufficient reserves so as to reserve all of its policies under the provisions of Chapter 3 of this Code, the stockholders of the stipulated premium company may convert the stipulated premium company into a legal reserve company

under the provisions of Chapter 3 of this Code. . . . In consummating said conversion, each and every of the requirements of Chapter 3 of this Code shall be complied with and the State Board of Insurance shall approve such conversion only after determining that said converted company has complied with said Chapter 3 of this Code.

Revisor's Note

Section 1, V.T.I.C. Article 22.20, refers to Chapter 3 of the Insurance Code several times. The reserve requirements are provided by Subchapter C, Chapter 3. The provisions of Chapter 3 relating to incorporation of domestic insurers are revised as Chapter 841 of this code. The revised law is drafted accordingly.

Revised Law

Sec. 884.602. ASSUMPTION CERTIFICATE. (a) Not later than the 30th day after the date of a conversion under this subchapter, the converted company shall issue to each policyholder an assumption certificate by which the policy liability is assumed by the converted company.

(b) The certificate must contain all of the provisions applicable to a policy issued by a company operating under Chapter 841. (V.T.I.C. Art. 22.20, Sec. 1 (part).)

Source Law

Sec. 1. . . . Within thirty (30) days following such conversion, the converted company shall furnish to each and every policyholder a certificate of assumption whereby the policy liability is assumed by the converted company and which said assumption certificate shall contain all of the provisions required by Chapter 3 of this Code. . . .

Revisor's Note

Section 1, V.T.I.C. Article 22.20, refers to Chapter 3 of the Insurance Code. The revised law refers to Chapter 841 of this code for the reasons stated in the revisor's note to Section 884.601.

Revised Law

Sec. 884.603. EXEMPTION FROM CAPITAL AND SURPLUS REQUIREMENTS. (a) A stipulated premium company is exempt from the capital and surplus requirements of Section 884.601(a) if the company:

- (1) was organized before September 1, 1989;
- (2) possesses capital in an amount equal to at least \$100,000 and unencumbered surplus in an amount equal to at least \$100,000; and
- (3) converted to a company that operates under Chapter 841 before September 1, 1999.

(b) A stipulated premium company that is exempt under Subsection (a) shall immediately increase its capital and surplus to amounts that satisfy Section 884.601(a) on:

- (1) a change of control of at least 50 percent of the voting securities of the converted company; or
- (2) if the converted company or the holding company that controls the converted company, if any, is not controlled by voting securities, a change of at least 50 percent of the ownership of the converted company or its holding company.

(c) For purposes of Subsection (b), a transfer of ownership that occurs because of death, regardless of whether the decedent died testate or intestate, may not be considered a change in the control of a converted stipulated premium company or holding company if ownership is transferred solely to one or more individuals, each of whom would be an heir of the decedent if the decedent had died intestate. (V.T.I.C. Art. 22.20, Sec. 2.)

Source Law

Sec. 2. (a) The requirement under Section 1 of this article that a stipulated premium company have capital of at least Seven Hundred Thousand Dollars (\$700,000.00) and surplus of at least Seven Hundred Thousand Dollars (\$700,000.00) does not apply to a stipulated premium company that converts to a Chapter 3 company, if:

- (1) the stipulated premium company was organized before September 1, 1989;
- (2) the stipulated premium company shall be possessed with at least One Hundred Thousand Dollars (\$100,000.00) in capital and at least One Hundred Thousand Dollars (\$100,000.00) in free and unencumbered surplus; and
- (3) the conversion takes effect before September 1, 1999.

(b) A stipulated premium company that

is converted on or after September 1, 1989, and that has less than Seven Hundred Thousand Dollars (\$700,000.00) capital and Seven Hundred Thousand Dollars (\$700,000.00) surplus may continue to transact the kind or kinds of insurance business for which it has been issued a Texas certificate of authority. However, a stipulated premium company that is converted after September 1, 1989, must increase its capital to at least Seven Hundred Thousand Dollars (\$700,000.00) and its surplus to at least Seven Hundred Thousand Dollars (\$700,000.00) immediately after any change of control of the converted stipulated premium company or any holding company controlling the converted stipulated premium company if, after August 31, 1989:

(1) there has been a change of control of at least 50 percent of the voting securities of the converted stipulated premium company; or

(2) if the converted stipulated premium company or holding company is not controlled by voting securities, there is a change of at least 50 percent of the ownership of the stipulated premium company or holding company.

(c) For the purposes of Subsection (b) of this section, a transfer of ownership that occurs because of death, irrespective of whether the decedent died testate or intestate, may not be considered a change of control of a converted stipulated premium company or change of control of a holding company, if ownership is transferred solely to one or more natural persons, each of whom would be an heir of the decedent if the decedent had died intestate.

#### Revisor's Note

(1) Section 2(a), V.T.I.C. Article 22.20, refers to a company that "converts to a Chapter 3 company." The provisions of Chapter 3 relating to incorporation of domestic life, health, and accident insurers are revised as Chapter 841 of this code. The revised law is drafted accordingly.

(2) Section 2(b), V.T.I.C. Article



22.20, provides that a company exempted from capital and surplus requirements under Section 2(a) "may continue to transact the kind or kinds of insurance business for which it has been issued a Texas certificate of authority." The revised law omits the quoted language because the company's certificate of authority is unchanged by the conversion and permits the company to transact only those kinds of business.

[Sections 884.604-884.700 reserved for expansion]

SUBCHAPTER O. GENERAL FINANCIAL REGULATION

Sec. 884.701. HAZARDOUS FINANCIAL CONDITION, SUPERVISION, CONSERVATORSHIP, AND LIQUIDATION. Articles 1.32, 21.28, and 21.28-A apply to a stipulated premium company engaged in the business of insurance in this state. (New.)

Revisor's Note

V.T.I.C. Article 22.22 establishes procedures for conservatorship of a stipulated premium company that is insolvent or that is in a hazardous financial condition. Article 22.22 was enacted in 1965 and has not been subsequently amended. After the enactment of Article 22.22, the legislature established comprehensive procedures applicable to those companies. Together with V.T.I.C. Article 21.28, the later enacted provisions, which are contained in V.T.I.C. Article 1.32, originally enacted in 1975, and V.T.I.C. Article 21.28-A, originally enacted in 1967, completely subsume and replace the procedures established under Article 22.22. As a result, the revised law omits Article 22.22 as impliedly repealed and adds a reference to Articles 1.32, 21.28, and 21.28-A for the convenience of the reader. The omitted law reads:

Art. 22.22. If, upon an examination or at any other time, it appears to the Commissioner of Insurance that any stipulated premium company be insolvent, or its condition be, in the opinion of the Commissioner, such as to render the continuance of its business hazardous to the public, or to holders of its policies, or if such company appears to have exceeded its powers or failed to comply with the law, then

the Commissioner of Insurance shall notify the company of his determination and said company shall have thirty (30) days under the supervision of the Commissioner of Insurance within which to comply with the requirements of the Commissioner of Insurance, and in the event of its failure to comply within such time, the Commissioner of Insurance, acting for himself, or through a conservator appointed by the Commissioner of Insurance for that purpose, shall immediately take charge of such company, and all of the property and effects thereof.

If the Commissioner of Insurance is satisfied that such company can best serve its policyholders and the public through its continued operation by the conservator under the direction of said Commissioner of Insurance pending the election of new directors and officers by the shareholders in such manner as the Commissioner of Insurance may determine, the same shall be done, and the conservator may, with the approval of the Commissioner of Insurance, reinsure any part of such company's policies or certificates of insurance with some solvent insurance company authorized to transact business in this State. The conservator may transfer to the reinsurance company such assets or portions thereof as may be required to reinsure such policies. If the Commissioner of Insurance, however, is satisfied that such company is not in condition to satisfactorily continue business in the interest of its policyholders and shareholders under the conservator as above provided, the Commissioner of Insurance shall proceed to reinsure the outstanding policies in some solvent company, authorized to transact business in this State, or the Commissioner of Insurance shall proceed through such conservator to liquidate such company, or the Commissioner of Insurance may give notice to the Attorney General who shall thereupon apply to any court in Travis County having jurisdiction thereof for leave to file a suit in the nature of quo warranto to forfeit the charter of such company or to require it to comply with the law or to

satisfy the Commissioner of Insurance as to its solvency. The Court may, in its discretion, appoint agents or receivers to take charge of the effects and wind up the business of the company under usages and practices of equity; and may make disposition of the business and policies of the company as in the discretion of the court may seem proper. No suit for receiver shall be filed against any such company, nor shall any receiver be appointed, except upon the application therefor by the Attorney General, and in no event shall any receiver for any such company be appointed until after reasonable notice has issued and a hearing had before the court.

It shall be in the discretion of the Commissioner of Insurance to determine whether or not he will operate the company through a conservator, as provided above, or proceed to liquidate the company, or report it to the Attorney General, as herein provided.

When all the policies of a company are reinsured or liquidated, and all of its affairs concluded, as herein provided, the Commissioner of Insurance shall report the same to the Attorney General, who shall take such action as may be necessary to effect the forfeiture or cancellation of the charter of the company so reinsured and liquidated. Where the Commissioner of Insurance lends his approval to the merger, reinsurance or consolidation of the policies of one company with that of another, the same shall be reported to the Attorney General who shall proceed to effect the forfeiture or cancellation of the charter of the company from which the policies were merged, reinsured or consolidated, in the same manner as is provided for the charters of companies totally reinsured or liquidated. The cost incident to the conservator's services shall be fixed and determined by the Commissioner of Insurance and shall be a charge against the assets and funds of the company to be allowed and paid as the Commissioner of Insurance may determine.

CHAPTER 885. FRATERNAL BENEFIT SOCIETIES

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## CHAPTER 885. FRATERNAL BENEFIT SOCIETIES

### SUBCHAPTER A. GENERAL PROVISIONS

#### Revised Law

Sec. 885.001. DEFINITIONS. In this chapter:

(1) "Benefit certificate" means a document issued as written evidence of a benefit contract.

(2) "Benefit contract" means an agreement for provision of benefits authorized by Section 885.301, as that agreement is described by Section 885.306.

(3) "Benefit member" means an adult designated by the laws or rules of a fraternal benefit society as a benefit member under a benefit contract.

(4) "Fraternal benefit society's laws" means a fraternal benefit society's articles of incorporation, constitution, and bylaws, however designated.

(5) "Lodge" means a subordinate member unit of a fraternal benefit society. The term includes a camp, court, council, or branch.

(6) "Premium" means a premium, a rate, dues, or another required contribution that is payable under a benefit certificate or benefit contract.

(7) "Rule" means a rule, regulation, or resolution adopted by the supreme governing body or board of directors that has general application to the members of a fraternal benefit society. (V.T.I.C. Art. 10.03-1.)

#### Source Law

Art. 10.03-1. In this chapter:

(1) "Benefit contract" means the agreement for provision of benefits authorized by Article 10.05 of this chapter, as that agreement is described in Article 10.15 of this chapter.

(2) "Benefit member" means an adult member who is designated by the laws or rules of the society as a benefit member under a benefit contract.

(3) "Certificate" means a document issued as written evidence of a benefit contract.

(4) "Laws" means a society's articles of incorporation, constitution, and bylaws, however designated.

(5) "Lodge" means a subordinate member unit of a society, including a camp, court, council, or branch.

(6) "Premiums" means a premium, a rate, dues, or other required contributions that are payable under a certificate or benefit contract.

(7) "Rules" means a rule, regulation, or resolution adopted by the supreme governing body or board of directors that has general application to the members of the society.

#### Revisor's Note

(1) Subdivision (3), V.T.I.C. Article 10.03-1, defines "certificate" as a document issued as written evidence of a benefit



contract. Subsequent provisions of V.T.I.C. Chapter 10 use the term "certificate of authority," which is the document issued to a fraternal benefit society that is authorized to transact business in this state. To avoid confusion, the revised law defines "benefit certificate" rather than "certificate" and substitutes that term as appropriate throughout this chapter.

(2) Subdivision (4), V.T.I.C. Article 10.03-1, defines "laws" as a fraternal benefit society's articles of incorporation, constitution, and bylaws, however designated. Subsequent provisions of V.T.I.C. Chapter 10 use "laws" to refer to the laws of this state. To avoid confusion, the revised law defines "fraternal benefit society's laws" rather than "laws" and substitutes that term as appropriate throughout this chapter.

#### Revised Law

Sec. 885.002. LIMITED EXEMPTION FROM INSURANCE LAWS. (a) Except as provided by this chapter, a fraternal benefit society is governed by this chapter and is exempt from all other insurance laws of this state for all purposes.

(b) A law enacted after July 1, 1913, does not apply to fraternal benefit societies unless a fraternal benefit society is expressly designated in the law. (V.T.I.C. Art. 10.04.)

#### Source Law

Art. 10.04. Except as herein provided, such societies shall be governed by this chapter and shall be exempt from all provisions of the insurance laws of this State, not only in governmental relations with the State, but for every other purpose. No law hereafter enacted shall apply to them, unless they be expressly designated therein.

#### Revisor's Note

(1) V.T.I.C. Article 10.04 provides that a fraternal benefit society is exempt from all provisions of the insurance laws of this state, "not only in governmental relations with the State," but for all purposes. The revised law omits the quoted language as unnecessary because an exemption relating to "governmental relations" falls within an exemption "for all purposes."

(2) V.T.I.C. Article 10.04 refers to laws "hereafter enacted." Article 10.04 was enacted as part of Chapter 491, Acts of the 52nd Legislature, Regular Session, 1951, which enacted the Insurance Code in its original form. Section 2 of that act provided that "[n]othing contained in this Act shall be held or construed to effect any substantive change in the laws existing prior to the passage of this Act." Article 10.04 was derived from Article 4823, Revised Statutes. The Revised Statutes were enacted by Section 1 of the act captioned "An Act to Adopt and Establish the 'REVISED CIVIL STATUTES of the State of Texas,'" Acts of the 39th Legislature, Regular Session, 1925. Section 2 of that act repealed "all civil statutes of a general nature," and Section 3 of that act provided that "the repeal of any statute, or any portion thereof, by the preceding section, shall not affect or impair any . . . right vested or accrued . . . before such repeal shall take effect; but every such . . . right vested or accrued . . . shall remain in full force and effect to all intents or purposes as if such statute, or part thereof so repealed, had remained in force." Among the statutes repealed was the predecessor to Article 4823, which was enacted by Chapter 113, General Laws, Acts of the 33rd Legislature, Regular Session, 1913. That act took effect July 1, 1913. Accordingly, the revised law substitutes a reference to that effective date for "hereafter."

Revised Law

Sec. 885.003. EXEMPTION FROM TAXATION. (a) A fraternal benefit society organized or holding a certificate of authority under this chapter, including the former Chapter 10 of this code and Chapter 8, Title 78, Revised Statutes, is a charitable and benevolent institution. Except as provided by Subsection (b), all funds of a fraternal benefit society described by this subsection are exempt from any state, county, district, municipal, or school tax, including an occupation tax.

(b) Real estate or office equipment used for a purpose other than a lodge purpose is subject to taxation. (V.T.I.C. Art. 10.39.)

Source Law

Art. 10.39. Every fraternal benefit society organized or licensed under the provisions of Chapter 8 of Title 78 of the Revised Civil Statutes of Texas or this Chapter is hereby declared to be a charitable and benevolent institution, and all of the funds of such fraternal benefit society shall be exempt from all and every state, county, district, municipal and school tax, including occupation taxes, other than taxes or real estate and office equipment when used for other than lodge purposes.

Revisor's Note

V.T.I.C. Article 10.39 refers to a fraternal benefit society "licensed" under V.T.I.C. Chapter 10 or its statutory predecessors. Subsequent provisions of V.T.I.C. Chapter 10 refer to a "certificate," a "license to transact business," or a license "to do business." Throughout this chapter, the revised law substitutes "certificate of authority" for "certificate" or "license" and "holding a certificate of authority" for "licensed" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

Revised Law

Sec. 885.004. INAPPLICABILITY TO CERTAIN SOCIETIES. (a) Except as provided by Subsection (b), this chapter does not apply to:

(1) a grand or subordinate lodge of Masons, Odd Fellows, Knights of Pythias, or the Junior Order of the United American Mechanics;

(2) a society that limits its membership to those engaged in one or more hazardous occupations in the same or similar lines of business;

(3) a society that does not issue benefit certificates;

(4) an association of local lodges of a society engaged in business in this state on July 1, 1913, that provides:

(A) death benefits of not more than \$500 to any one individual;

(B) disability benefits of not more than \$300 in any one year to any one individual; or

(C) both death benefits described by Paragraph (A) and disability benefits described by Paragraph (B);

(5) a contract of reinsurance on a plan in this state described by Subdivision (4);

(6) a domestic society that limits its membership to the employees of:

(A) a particular municipality; or

(B) a designated firm or corporation; or

(7) a domestic lodge, order, or association of a purely religious, charitable, and benevolent description that does not provide:

(A) death benefits of more than \$100; or

(B) disability benefits of more than \$150 to any one individual in any one year.

(b) This chapter applies to:

(1) the insurance department of the supreme lodge Knights of Pythias; and

(2) the beneficiary degree of insurance branch of the Junior Order of the United American Mechanics.

(c) The department may require from any society information that will permit the department to determine whether the society is exempt from this chapter. (V.T.I.C. Art. 10.12, Subsec. (e); Art. 10.38 (part).)

#### Source Law

[Art. 10.12]

(e) Nothing contained in this chapter shall be construed to affect or apply to societies which admit to membership only persons engaged in one or more hazardous occupations, in the same or similar lines of business.

Art. 10.38. Nothing in this chapter shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows or Knights of Pythias (exclusive of the insurance department of the supreme lodge Knights of Pythias) and the Junior Order of the United American Mechanics (exclusive of their beneficiary degree of insurance branch) or societies which limit their membership to any one hazardous occupation nor to similar societies which do not issue insurance certificates nor to an association of local lodges of a society now doing business in this State which provides death benefits not exceeding Five Hundred (\$500.00) Dollars to

any one person or disability benefits not exceeding Three Hundred (\$300.00) Dollars in any one year to pay one person or both, nor to any contracts of reinsurance business on such plan in this State nor to domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house or corporation, nor to domestic lodges, orders or associations of a purely religious, charitable and benevolent description which do not provide for a death benefit of more than One Hundred (\$100.00) Dollars or for disability benefits of more than One Hundred and Fifty (\$150.00) Dollars to any person in one (1) year. The Board of Insurance Commissioners may require from any society such information as will enable it to determine whether such society is exempt from the provisions of this law.

. . .

#### Revisor's Note

(1) Subsection (e), V.T.I.C. Article 10.12, and V.T.I.C. Article 10.38 provide that the chapter does not "affect or apply to" certain societies. The revised law omits the reference to "affect" because in context, "affect" is included within the meaning of "apply to."

(2) V.T.I.C. Article 10.38 refers to an association of local lodges of "a society now doing business in this State." The revised law substitutes the date July 1, 1913, for "now" for the reason stated in Revisor's Note (2) to Section 885.002. Article 10.38 was enacted by the same act as V.T.I.C. Article 10.04, and the discussion in Revisor's Note (2) to Section 885.002 relating to Article 10.04 applies equally to Article 10.38.

(3) V.T.I.C. Article 10.38 refers to a "city or town." The revised law substitutes "municipality" for "city or town" because that is the term used in the Local Government Code.

(4) V.T.I.C. Article 10.38 refers to a "designated firm, business house or corporation." The revised law omits the

reference to "business house" because it is included within the meaning of "firm or corporation."

(5) V.T.I.C. Article 10.38 refers to the "Board of Insurance Commissioners." Under Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, administration of the insurance laws of this state was reorganized and the powers and duties of the Board of Insurance Commissioners were transferred to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the Board of Insurance Commissioners or the State Board of Insurance have been changed appropriately.

#### Revised Law

Sec. 885.005. FRATERNAL BENEFIT SOCIETIES THAT PROVIDE BENEFITS RESULTING FROM ACCIDENTS ONLY. (a) A fraternal benefit society that provides benefits for death or disability resulting from accidents only and does not provide death benefits or benefits for sickness may hold a certificate of authority under this chapter if the society:

(1) was organized and incorporated before July 1, 1913; and

(2) operates as provided by Sections 885.051-885.054 and 885.062.

(b) A fraternal benefit society that holds a certificate of authority as provided by Subsection (a) may exercise all the privileges provided by and is subject to this chapter other than:

(1) provisions requiring medical examination;

(2) provisions requiring that a benefit certificate specify the amount of benefits; and

(3) provisions relating to the valuation of benefit certificates. (V.T.I.C. Art. 10.38 (part).)

#### Source Law

Art. 10.38. . . . Any fraternal benefit society heretofore organized and incorporated

and operating within the definition set forth in the first three articles of this chapter, providing for the benefits in case of death or disability resulting solely from accidents, but which does not obligate itself to pay death or sick benefits, may be licensed under the provisions of this chapter and shall have all the privileges and shall be subject to all the provisions and regulations of this law, except that the provisions of this law requiring medical examinations, valuations of benefit certificates and that the certificates shall specify the amount of benefits, shall not apply to such society.

Revisor's Note

V.T.I.C. Article 10.38 refers to a "fraternal benefit society heretofore organized and incorporated and operating." The revised law substitutes the date July 1, 1913, for "heretofore" for the reasons stated in Revisor's Note (2) to Section 885.002 and Revisor's Note (2) to Section 885.004.

Revised Law

Sec. 885.006. TREATMENT OF CERTAIN GRAND LODGES. A grand lodge, by whatever name known and without regard to whether incorporated, that holds a charter from any supreme governing body and that was engaging in business in this state on July 1, 1913, as a fraternal beneficiary association under the separate jurisdiction plan is considered to be a single state organization. (V.T.I.C. Art. 10.27 (part).)

Source Law

Art. 10.27. . . . All grand lodges, by whatever name known, whether incorporated or not, holding charters from any supreme governing body, which were conducting business in this State upon the passage of this law as a fraternal beneficiary association, upon what is known as the separate jurisdiction plan, shall be treated as single State organizations, and . . . .

Revisor's Note

V.T.I.C. Article 10.27 refers to "grand lodges . . . which were conducting business in this State upon the passage of this law."

The revised law substitutes the date July 1, 1913, for "upon the passage of this law" for the reason stated in Revisor's Note (2) to Section 885.002. Article 10.27 was enacted by the same act as V.T.I.C. Article 10.04, and the discussion in Revisor's Note (2) to Section 885.002 relating to Article 10.04 applies equally to Article 10.27.

[Sections 885.007-885.050 reserved for expansion]

#### SUBCHAPTER B. STRUCTURE OF FRATERNAL BENEFIT SOCIETY

##### Revised Law

Sec. 885.051. FRATERNAL BENEFIT SOCIETY DEFINED. A corporation, society, order, or voluntary association is a fraternal benefit society if it:

(1) has a lodge system and a representative form of government or limits its membership to a secret fraternity that has a lodge system and a representative form of government;

(2) is organized and operated solely for the mutual benefit of its members and their beneficiaries and not for profit;

(3) does not have capital stock; and

(4) provides for the payment of benefits in accordance with Section 885.301. (V.T.I.C. Art. 10.01, Subsec. (a) (part).)

##### Source Law

Art. 10.01. (a) Any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system and representative form of government, or which limits its membership to a secret fraternity having a lodge system and representative form of government, and which shall make provision for the payment of benefits in accordance with Article 10.05 is hereby declared to be a fraternal benefit society. . . .

##### Revised Law

Sec. 885.052. CONTROL OF FRATERNAL BENEFIT SOCIETY. (a) In this section, "control" has the meaning described by Sections 823.005 and 823.151.

(b) Control of a fraternal benefit society must be ultimately vested in the membership as provided by this chapter. Control of a fraternal benefit society may be exercised by lodges and a supreme governing body elected under Section 885.054.

(c) The methods provided by this section for exercising



control over a fraternal benefit society are exclusive.

(d) Chapter 823 applies to a fraternal benefit society. Each change in control of a fraternal benefit society must be consistent with the nature of a fraternal benefit society as specified by this section, Sections 885.051, 885.053, and 885.054, and other applicable law. (V.T.I.C. Art. 10.01, Subsec. (b); Art. 10.21, Subsec. (c).)

Source Law

[Art. 10.01]

(b) A characteristic of a fraternal benefit society as defined by Section (a) of this article is that control must be ultimately vested in the membership as provided by this article, Articles 10.02 and 10.03 of this code, and other provisions of this chapter, and that control of the fraternal benefit society may be exercised by lodges and a supreme legislative or governing body elected in the manner provided by Article 10.03 of this code. The methods provided by this section for exercising control over a fraternal benefit society are exclusive. In this section, "control" has the meaning assigned by Section 2(d), Article 21.49-1, of this code.

[Art. 10.21]

(c) Article 21.49-1 of this code applies to fraternal benefit societies. There may be no change in control of a fraternal benefit society that is inconsistent with the nature of a fraternal benefit society as specified in Article 10.01, 10.02, or 10.03 of this code and other applicable provisions of law.

Revisor's Note

Subsection (b), V.T.I.C. Article 10.01, refers to "a supreme legislative or governing body elected in the manner provided by Article 10.03 of this code." V.T.I.C. Article 10.03, revised as Section 885.054, refers only to "a supreme governing body," which may be either an assembly or a board. For consistency throughout this chapter, the revised law omits "legislative" from the reference to a "supreme legislative or

governing body."

Revised Law

Sec. 885.053. LODGE SYSTEM DEFINED. A fraternal benefit society is considered to be operating on the lodge system if the society:

(1) has a supreme governing body; and

(2) has lodges:

(A) into which members are admitted in accordance with the fraternal benefit society's laws, rituals, and rules; and

(B) that are required by the fraternal benefit society's laws to hold periodic meetings. (V.T.I.C. Art. 10.02 (part).)

Source Law

Art. 10.02. Any society having a supreme governing or legislative body and subordinate lodges or branches by whatever name known into which members shall be admitted in accordance with its constitution, laws, ritual, rules and regulations, and which shall be required by the laws of such society to hold periodical meetings, shall be deemed to be operating on the lodge system. . . .

Revisor's Note

(1) V.T.I.C. Article 10.02 refers to "subordinate lodges or branches by whatever name known." Other provisions of V.T.I.C. Chapter 10 contain similar references. Throughout this chapter, the revised law omits the references to "subordinate" and "branches by whatever name known" as unnecessary because the definition of "lodge" under Subdivision (5), V.T.I.C. Article 10.03-1, revised as Section 885.001(5), defines a lodge as "a subordinate member unit of a fraternal benefit society."

(2) V.T.I.C. Article 10.02 refers to a fraternal benefit society's "constitution, laws, ritual, rules and regulations." Other provisions of V.T.I.C. Chapter 10 contain similar references. Throughout this chapter, the revised law omits "constitution" as unnecessary because Subdivision (4), V.T.I.C. Article 10.03-1, revised as Section 885.001(4), defines "fraternal benefit society's laws" as including a fraternal

benefit society's constitution. Similarly, throughout this chapter, the revised law omits "regulations" as unnecessary because the definition of "rule" under Subdivision (7), V.T.I.C. Article 10.03-1, revised as Section 885.001(7), defines "rule" as including a regulation.

Revised Law

Sec. 885.054. REPRESENTATIVE FORM OF GOVERNMENT DEFINED. A fraternal benefit society has a representative form of government if:

- (1) the society has a supreme governing body constituted as:
    - (A) an assembly, as described by Section 885.055;or
    - (B) a board, as described by Section 885.057;
  - (2) the officers of the society are elected by the supreme governing body or the board of directors;
  - (3) only a benefit member is eligible to serve as a member of the supreme governing body, the board of directors, or an intermediate assembly of the society;
  - (4) only a benefit member may vote on the management of the society's insurance affairs;
  - (5) a voting member of the society has only one vote;
- and
- (6) a voting member of the society may not cast a vote by proxy. (V.T.I.C. Art. 10.03.)

Source Law

Art. 10.03. A society has a representative form of government if:

- (1) the society has a supreme governing body constituted:
  - (A) as an assembly as described by Article 10.03A of this chapter;or
  - (B) as a board as described by Article 10.03B of this chapter;
- (2) the officers of the society are elected by the supreme governing body or by the board of directors;
- (3) only benefit members are eligible to serve as members of the supreme governing body, the board of directors, or an intermediate assembly of the society;
- (4) only benefit members may vote on the management of insurance affairs of the society;

(5) a voting member of the society has only one vote; and

(6) a voting member may not cast a vote by proxy.

Revised Law

Sec. 885.055. ASSEMBLY AS SUPREME GOVERNING BODY. (a) The supreme governing body of a fraternal benefit society is an assembly if the body is composed of:

(1) delegates elected directly by the members or at intermediate assemblies or conventions by the members or their representatives; and

(2) other delegates as prescribed by the fraternal benefit society's laws.

(b) The elected delegates to an assembly must:

(1) constitute a majority of the assembly in number; and

(2) be entitled to cast the greater of:

(A) two-thirds of the votes in the assembly; or

(B) the number of votes required to amend the fraternal benefit society's laws.

(c) A fraternal benefit society may provide for election of delegates by mail. (V.T.I.C. Art. 10.03A, Subsecs. (a), (b), (c).)

Source Law

Art. 10.03A. (a) The supreme governing body is an assembly if it is composed of:

(1) delegates elected directly by the members or at intermediate assemblies or conventions by the members or their representatives; and

(2) other delegates as prescribed by the society's laws.

(b) A society may provide for election of delegates by mail.

(c) The elected delegates to the assembly must:

(1) constitute a majority of the assembly in number; and

(2) be entitled to the greater of:

(A) two-thirds of the votes in the assembly; or

(B) the number of votes required to amend the society's laws.

Revised Law

Sec. 885.056. ASSEMBLY MEETINGS; DIRECTORS. (a) An

assembly that is the supreme governing body of a fraternal benefit society shall:

- (1) meet at least once every four years; and
- (2) elect a board of directors to conduct the business of the society between meetings of the assembly.

(b) A vacancy on the board of directors that occurs between elections may be filled in the manner prescribed by the fraternal benefit society's laws. (V.T.I.C. Art. 10.03A, Subsecs. (d), (e).)

#### Source Law

(d) The assembly shall:

- (1) meet at least once every four years; and
- (2) elect a board of directors to conduct the business of the society between meetings of the assembly.

(e) A vacancy on the board of directors that occurs between elections may be filled as prescribed in the society's laws.

#### Revised Law

Sec. 885.057. BOARD AS SUPREME GOVERNING BODY. (a) The supreme governing body of a fraternal benefit society is a board if the body is composed of:

(1) individuals elected directly by the members or at intermediate assemblies by the members or their representatives; and

(2) other individuals as prescribed by the fraternal benefit society's laws.

(b) The individuals elected to the board must:

- (1) constitute a majority of the board in number; and
- (2) have at least the number of votes required to amend the fraternal benefit society's laws, other than laws, if any, that must be amended by direct vote of the members.

(c) A fraternal benefit society may provide for election of the board by mail. (V.T.I.C. Art. 10.03B, Subsecs. (a), (b), (c).)

#### Source Law

Art. 10.03B. (a) The supreme governing body is a board if it is composed of:

- (1) persons elected either directly by the members or at intermediate assemblies by the members or their representatives; and

(2) other persons as prescribed by the society's laws.

(b) A society may provide for election of the board by mail.

(c) The persons elected to the board must:

(1) constitute a majority of the board in number; and

(2) have at least the number of votes required to amend the society's laws, other than laws of the society, if any, that must be amended by direct vote of the members.

#### Revised Law

Sec. 885.058. BOARD MEMBERS; MEETINGS. (a) The term of a member of a board that is the supreme governing body of a fraternal benefit society may not exceed four years.

(b) A vacancy on the board that occurs between elections may be filled in the manner prescribed by the fraternal benefit society's laws. An individual filling the unexpired term of an elected board member is considered to be an elected member.

(c) A board shall meet at least annually to conduct the business of the fraternal benefit society. (V.T.I.C. Art. 10.03B, Subsecs. (d), (e), (f).)

#### Source Law

(d) The term of a board member may not exceed four years.

(e) A vacancy on the board that occurs between elections may be filled in the manner prescribed by the society's laws. A person filling the unexpired term of an elected board member is considered to be an elected member.

(f) A board shall meet at least once each year to conduct the business of the society.

#### Revised Law

Sec. 885.059. LOCATION OF MEETINGS OF SUPREME GOVERNING BODY. (a) A domestic fraternal benefit society may provide that its supreme governing body may hold meetings in any state, district, province, or territory in which the society has a lodge.

(b) All business transacted at a meeting authorized under Subsection (a) is as valid in all respects as if the meeting were held in this state. (V.T.I.C. Art. 10.25 (part).)

Source Law

Art. 10.25. Each domestic society . . . but may provide that the meetings of its legislative or governing body may be held in any state, district, province or territory wherein such society has subordinate branches. All business transacted at such meetings shall be as valid in all respects as if such meetings were held in this State.

Revisor's Note

V.T.I.C. Article 10.25 refers to the "legislative or governing body" of a fraternal benefit society. For consistency throughout this chapter, the revised law substitutes "supreme governing body" for "legislative or governing body."

Revised Law

Sec. 885.060. FRATERNAL BENEFIT SOCIETY'S LAWS BINDING. A fraternal benefit society's laws may provide that a lodge or a subordinate officer or member of the society may not waive any provision of those laws. Those laws are binding on:

- (1) the society;
- (2) each member of the society; and
- (3) each beneficiary of a member. (V.T.I.C. Art. 10.27 (part).)

Source Law

Art. 10.27. The constitution and laws of the society may provide that no subordinate body nor any of its subordinate officers or members shall have the power or authority to waive any provision of the laws and Constitution of the society, and the same shall be binding on the society and each and every member thereof and on all beneficiaries of members. . . .

Revised Law

Sec. 885.061. AMENDMENT OF FRATERNAL BENEFIT SOCIETY'S LAWS. (a) A fraternal benefit society transacting business under this chapter shall file with the department a certified copy of each amendment of the fraternal benefit society's laws not later than the 90th day after the date of enactment of the amendment.

(b) A printed copy of a fraternal benefit society's laws, as amended, that is certified by the society's secretary or corresponding officer is prima facie evidence that the laws were

legally adopted. (V.T.I.C. Art. 10.29.)

Source Law

Art. 10.29. Every society transacting business under this chapter shall file with the Board, a duly certified copy of all amendments of, or additions to, its Constitution and laws within ninety (90) days after the enactment of the same. Printed copies of the Constitution and laws, as amended, changed, or added to, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof.

Revisor's Note

V.T.I.C. Article 10.29 refers to "amendments of" and "additions to" a fraternal benefit society's constitution and laws and to a society's constitution and laws "as amended, changed, or added to." Throughout this chapter, references to "additions" and "changes" are omitted from the revised law because in this context, "additions" and "changes" are included within the meaning of "amendments."

Revised Law

Sec. 885.062. QUARTERLY LODGE MEETINGS REQUIRED. A fraternal benefit society's laws must require each lodge to hold regular meetings at least once each calendar quarter to further the society's purposes. (V.T.I.C. Art. 10.02 (part).)

Source Law

Art. 10.02. . . . The laws of the society must require subordinate lodges to hold regular meetings at least once in each calendar quarter in furtherance of the purposes of the society.

Revised Law

Sec. 885.063. MERGER OR TRANSFER OF MEMBERSHIP OR FUNDS.  
(a) A domestic fraternal benefit society may not merge with or accept a transfer of the membership or funds of another fraternal benefit society unless:

(1) the merger or transfer is evidenced by a written contract that fully sets out the terms of the merger or transfer;  
and

(2) the societies file with the department:



(A) a copy of the contract;  
(B) a sworn statement of the financial condition of each society by its president and secretary or corresponding officers; and

(C) a certificate of those officers, verified under oath, that the merger or transfer has been approved by a vote of two-thirds of the members of the supreme governing body of each society.

(b) On submission, the commissioner shall examine the contract, financial statements, and certificates. The commissioner shall approve the merger or transfer and issue a certificate to that effect if the commissioner determines that:

(1) the contract conforms with this section and Section 885.052(d);

(2) the financial statements are correct;

(3) the merger or transfer is just and equitable to the members of each society; and

(4) the new or surviving society complies with each requirement of a fraternal benefit society under this chapter.

(c) A contract of merger or transfer takes effect on issuance of a certificate under Subsection (b). (V.T.I.C. Art. 10.21, Subsecs. (a), (b).)

#### Source Law

Art. 10.21. (a) No domestic society shall merge with or accept the transfer of the membership or funds of any other society unless such merger or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of such merger or transfer, and filed with the department, together with a sworn statement of the financial condition of each of said societies by its president and secretary, or corresponding officers, and a certificate of such officers, duly verified under oath of said officers of each of the contracting societies, that such merger or transfer has been approved by a vote of two-thirds (2/3) of the members of the supreme legislative or governing body of each of said societies.

(b) Upon the submission of said contract, financial statements and certificates, the department shall examine the same, and if it shall find that such statements are correct and the said contract to be in conformity with the provisions of this article, that such merger or transfer is

just and equitable to the members of each of said societies, and that the new or surviving society complies with all of the requirements of a fraternal benefit society as set forth in this chapter, the department shall approve said merger or transfer, issue its certificate to that effect, and thereupon the said contract or merger or transfer shall be of full force and effect.

Revisor's Note

Subsection (a), V.T.I.C. Article 10.21, refers to the "terms and conditions" of a merger or transfer. Throughout this chapter, references to "conditions" are omitted from the revised law as unnecessary in this context because "conditions" is included within the meaning of "terms."

[Sections 885.064-885.100 reserved for expansion]

SUBCHAPTER C. MEMBERS

Revised Law

Sec. 885.101. QUALIFICATIONS FOR FRATERNAL BENEFIT SOCIETY MEMBERSHIP. (a) A fraternal benefit society shall specify in the fraternal benefit society's laws or rules:

- (1) subject to Subsection (b), the eligibility standards for each membership class;
- (2) the process for admission for each membership class; and
- (3) subject to Subsection (c), the rights and privileges of each membership class.

(b) If a fraternal benefit society provides benefits on the lives of children, the minimum age for adult membership may not be less than 15 years or more than 21 years.

(c) Only a benefit member may vote on the management of the insurance affairs of a fraternal benefit society.

(d) Membership rights in a fraternal benefit society are personal to the member, and a member may not assign those rights. (V.T.I.C. Art. 10.12, Subsecs. (a), (c).)

Source Law

Art. 10.12. (a) A society shall specify in its laws or rules:

- (1) the eligibility standards for each membership class, provided that if benefits are provided on the lives of children, the minimum age for adult membership is not less than 15 years of age and not more than 21 years of age;

(2) the process for admission for each membership class; and

(3) the rights and privileges of each membership class, provided that only benefit members may vote on the management of the insurance affairs of the society.

(c) Membership rights in the society are personal to the member. A member may not assign membership rights.

Revised Law

Sec. 885.102. SOCIAL MEMBERS. A fraternal benefit society may admit social members. A social member may not vote in the management of the insurance affairs of the society. (V.T.I.C. Art. 10.12, Subsec. (b).)

Source Law

(b) A society may admit social members. A social member may not vote in the management of the insurance affairs of the society.

Revised Law

Sec. 885.103. CHILDREN. (a) A fraternal benefit society may organize and operate branches for children on whose lives the society provides insurance or annuities.

(b) A child is not required to be a member of a lodge or to be initiated in a lodge.

(c) A child may not have any voice in the management of a fraternal benefit society. (V.T.I.C. Art. 10.06 (part).)

Source Law

Art. 10.06. [Any fraternal benefit society authorized to do business in this State may provide . . . for insurance, annuities, or for insurance and annuities, upon the lives of children at any age] . . . . Any such society may at its option organize and operate branches for such children and membership in local lodges, and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society.

Revised Law

Sec. 885.104. GRIEVANCE OR COMPLAINT PROCEDURES. A fraternal benefit society's laws or rules may provide for

grievance or complaint procedures for members. (V.T.I.C. Art. 10.12, Subsec. (d).)

Source Law

(d) A society may provide in its laws or rules for grievance or complaint procedures for members.

[Sections 885.105-885.150 reserved for expansion]

SUBCHAPTER D. AUTHORITY TO ENGAGE IN BUSINESS

Revised Law

Sec. 885.151. APPLICABILITY TO CERTAIN FRATERNAL BENEFIT SOCIETIES CONTINUOUSLY AUTHORIZED TO ENGAGE IN BUSINESS. This subchapter does not apply to a fraternal benefit society authorized to engage in business in this state on June 1, 1965, as long as the society's certificate of authority or any renewal or extension of its certificate of authority continues in force. (V.T.I.C. Art. 10.19, Subsec. (g) (part).)

Source Law

(g) . . . provided further, that the above provisions of this article shall not apply to Fraternal Benefit Societies authorized to transact business in this state on June 1, 1965, so long as their licenses or renewals or extensions thereof continue in force. . . .

Revisor's Note

Subsection (g), V.T.I.C. Article 10.19, in part provides that the "following provisions" of Article 10.19, meaning Subsection (h), which is revised as Sections 885.251 and 885.501, "shall apply to such Fraternal Benefit Societies authorized to transact business in this state on June 1, 1965." The revised law omits this provision as unnecessary because the law applies to any fraternal benefit society engaging in business in this state in the absence of a provision to the contrary. The omitted law reads:

(g) . . . The following provisions of this article shall apply to such Fraternal Benefit Societies authorized to transact business in this state on June 1, 1965.

Revised Law

Sec. 885.152. ELIGIBILITY TO PROVIDE BENEFITS. After June 1, 1965, a corporation, society, order, or voluntary association may qualify as a fraternal benefit society as defined by Section 885.051 for the purpose of providing for the payment of benefits as provided by Section 885.301 only if it:

(1) has at least 500 members and at least 10 lodges;  
and

(2) has been in continuous operation for at least the five years preceding the filing of its articles of incorporation or association as provided by Section 885.153. (V.T.I.C. Art. 10.19, Subsec. (a) (part).)

Source Law

Art. 10.19. (a) Hereafter, only such corporation, society, order of voluntary association, having not less than five hundred (500) members and ten (10) subordinate lodges, without capital stock organized and carried on solely for the mutual benefit of its members, and not for profit, and having a lodge system and representative form of government, or which limits its membership to a secret fraternity having a lodge system and representative form of government, may, provided that it has been in continuous operation for a period of not less than five (5) years immediately preceding the filing of its articles of incorporation or association as hereinafter provided, qualify as a Fraternal Benefit Society as defined in Article 10.01 for the purpose of providing for the payment of benefits as provided in Article 10.05, . . . .

Revisor's Note

(1) Subsection (a), V.T.I.C. Article 10.19, provides that "[h]ereafter" only certain corporations, societies, orders, or associations may qualify as a fraternal benefit society for the purpose of providing benefits. That language was added to Article 10.19 by Chapter 551, Acts of the 59th Legislature, Regular Session, 1965. That act also added language later designated as Subsection (g), Article 10.19, revised as Section 885.151, that provides that "the

above provisions of this article [including Subsection (a), revised in this section] shall not apply to Fraternal Benefit Societies authorized to transact business in this state on June 1, 1965, so long as their licenses or renewals or extensions thereof continue in force." When Subsections (a) and (g) are read together, it is clear that "hereafter" means "after June 1, 1965," and the revised law is drafted accordingly.

(2) Subsection (a), V.T.I.C. Article 10.19, refers to a "corporation, society, [or] order of voluntary association." Order "of" voluntary association, in context, is clearly a typographical error. Subsection (a), V.T.I.C. Article 10.01, revised in relevant part as Section 885.051, refers to a "corporation, society, order, or voluntary association." Accordingly, the revised law substitutes "order or voluntary association" for "order of voluntary association."

(3) Subsection (a), V.T.I.C. Article 10.19, provides that a corporation, society, order, or voluntary association "without capital stock organized and carried on solely for the mutual benefit of its members, and not for profit, and having a lodge system and representative form of government, or which limits its membership to a secret fraternity having a lodge system and representative form of government" may qualify as a fraternal benefit society under V.T.I.C. Article 10.01, revised in relevant part as Section 885.051. Throughout this chapter after Section 885.051, the revised law omits the quoted language and similar provisions as unnecessary because each restriction imposed by the quoted language is imposed on all fraternal benefit societies by Subsection (a), V.T.I.C. Article 10.01, revised in relevant part as Section 885.051.

(4) Subsection (a), V.T.I.C. Article 10.19, refers to "a period of not less than five (5) years immediately preceding" the filing of a fraternal benefit society's articles of incorporation or association. The revised law omits the reference to "immediately" as unnecessary and refers to

"the five years preceding" the filing of the articles because "the five years preceding" means the five years "immediately preceding."

Revised Law

Sec. 885.153. FILING OF ARTICLES OF INCORPORATION OR ASSOCIATION. A corporation, society, order, or voluntary association eligible under Section 885.152 may qualify as a fraternal benefit society by filing with the department:

(1) certified articles of incorporation or association that set out:

(A) the name of the society;

(B) the purpose for which the society is formed;

and

(C) the manner in which the society's corporate powers are to be exercised;

(2) certified copies of the fraternal benefit society's laws and rules;

(3) copies of all proposed forms of benefit certificates, applications for benefit certificates, and circulars to be issued by the society;

(4) a surety bond as required by Section 885.156; and

(5) additional information that the commissioner considers necessary. (V.T.I.C. Art. 10.19, Subsecs. (a) (part), (b) (part).)

Source Law

(a) . . . only such corporation, society, order of voluntary association . . . may . . . qualify as a Fraternal Benefit Society [as defined in Article 10.01 for the purpose of providing for the payment of benefits as provided in Article 10.05,] by filing with the department duly certified articles of incorporation or association. Such articles shall set out:

(1) The name of the society, . . . .

(2) The purpose for which it is formed, . . . and the mode in which its corporate powers are to be exercised. . . .

(b) Such articles of incorporation or association and duly certified copies of the Constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor and circulars to be issued by such society, and a bond . . . shall be filed with the commissioner, who may require such further

information as the commissioner deems  
necessary, and . . . .

Revised Law

Sec. 885.154. NAME OF FRATERNAL BENEFIT SOCIETY. The name of a fraternal benefit society may not so closely resemble the name of any society or insurance company engaging in business in this state as to mislead the public or lead to confusion.  
(V.T.I.C. Art. 10.19, Subsec. (a) (part).)

Source Law

(a) . . . [Such articles shall set  
out:

(1) The name of the society] which shall not so closely resemble the name of any society or insurance company already transacting business in this state as to mislead the public or lead to confusion.

. . . .

Revised Law

Sec. 885.155. PURPOSES OF FRATERNAL BENEFIT SOCIETY.  
(a) The purposes for which a fraternal benefit society is organized may not include more liberal powers than are granted by this chapter. Any lawful, social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious advantages may be set out among the society's purposes.  
(b) A fraternal benefit society's purposes may be implemented directly by the society or indirectly through subsidiary corporations or affiliated organizations. (V.T.I.C. Art. 10.19, Subsec. (a) (part).)

Source Law

(a) . . . [Such articles shall set  
out:

. . . .

(2) The purpose for which it is formed,] which shall not include more liberal powers than are granted by this Chapter. Any lawful, social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious advantages may be set forth among the purposes of the society . . . . These purposes may be carried out directly by the society or indirectly through subsidiary corporations or affiliated organizations.



Revised Law

Sec. 885.156. SURETY BOND. (a) A fraternal benefit society must file with the department a bond in an amount not less than \$300,000 and not more than \$1.5 million, as required by the commissioner, with sureties approved by the commissioner.

(b) The bond must be conditioned on the return of advance payments to applicants for benefit certificates as provided by this subchapter if the fraternal benefit society fails to qualify under this subchapter within one year. (V.T.I.C. Art. 10.19, Subsec. (b) (part).)

Source Law

(b) . . . a bond in the sum of not less than Three Hundred Thousand Dollars (\$300,000.00) and not more than One Million Five Hundred Thousand Dollars (\$1,500,000.00), as required by the commissioner, with sureties approved by the commissioner, conditioned upon the return of the advance payments, as provided in this article, to applicants, if the organization fails to qualify within one (1) year, shall be filed with the commissioner . . . .

Revised Law

Sec. 885.157. ISSUANCE OF PRELIMINARY CERTIFICATE OF AUTHORITY. If the purposes of a fraternal benefit society conform to the requirements of this chapter and all provisions of law have been complied with, the commissioner shall:

(1) certify that the society is in compliance with all provisions of law;

(2) retain and record the articles of incorporation or association; and

(3) issue to the society a preliminary certificate of authority. (V.T.I.C. Art. 10.19, Subsec. (b) (part).)

Source Law

(b) . . . if the purposes of the society conform to the requirements of this law, and all provisions of law have been complied with, the commissioner shall so certify and retain and record or file the articles of incorporation or association and furnish the incorporators a preliminary certificate authorizing said society to solicit from its members applications for insurance benefits as hereinafter provided.

Revisor's Note

(1) Subsection (b), V.T.I.C. Article 10.19, requires the commissioner of insurance to "record or file" a fraternal benefit society's articles of incorporation or association. The reference to "file" is omitted from the revised law because in this context, "file" is included within the meaning of "record."

(2) Subsection (b), V.T.I.C. Article 10.19, refers to a preliminary certificate "authorizing said society to solicit from its members applications for insurance benefits as hereinafter provided." The revised law omits the quoted language as unnecessary because Subsection (c), V.T.I.C. Article 10.19, revised in relevant part as Section 885.158(a), provides that under a preliminary certificate, a fraternal benefit society may solicit applications for benefits from its members.

Revised Law

Sec. 885.158. POWERS AND DUTIES UNDER PRELIMINARY CERTIFICATE OF AUTHORITY; QUALIFICATION. (a) On receipt of a preliminary certificate of authority from the department under Section 885.157, a fraternal benefit society:

(1) may solicit from its members applications for insurance benefits for the purpose of completing the society's qualification;

(2) shall collect from each applicant an amount equal to at least one regular monthly payment, in accordance with the society's table of rates as provided by the fraternal benefit society's laws; and

(3) shall issue to each applicant a receipt for the amount collected under Subdivision (2).

(b) A fraternal benefit society operating under a preliminary certificate of authority may not incur a liability other than for advance payments collected under Subsection (a)(2), issue a benefit certificate, or pay, allow, or offer or promise to pay or allow to any person a death or disability benefit until:

(1) the society has established 10 lodges into which at least 500 applicants have been initiated;

(2) the society has received bona fide applications for death benefit certificates on at least 500 lives for at least \$2,000 each;

(3) each applicant for death benefits under Subdivision (2) has been regularly examined by a legally

qualified practicing physician;

(4) a certificate of each medical examination has been filed with and approved by the chief medical examiner of the society;

(5) the society submits to the department a list of the applicants for death benefits under Subdivision (2); and

(6) the society shows to the department, by the sworn statement of its treasurer or corresponding officer, that at least 500 applicants have each paid in cash in advance at least one regular monthly payment per \$1,000 of indemnity to be provided and that the payments in the aggregate amount to at least \$150,000.

(c) The list of applicants for death benefits submitted under Subsection (b)(5) must be under oath of the fraternal benefit society's president and secretary or corresponding officers and must provide for each applicant:

- (1) the applicant's name and address;
- (2) the date the applicant was examined;
- (3) the date the applicant was approved;
- (4) the date the applicant was initiated;
- (5) the name and number of the lodge of which the applicant is a member;
- (6) the amount of benefits to be granted; and
- (7) the rate of stated premiums.

(d) The rate of stated premiums under Subsection (c)(7) must be sufficient to provide for meeting the obligations the fraternal benefit society has contracted to pay, when valued for death benefits on the basis of the National Fraternal Congress Table of Mortality, as adopted by the National Fraternal Congress, August 23, 1899, or, at the society's option, any higher standard, and for disability benefits or combined death and permanent total disability benefits by tables based on reliable experience, with an interest assumption not greater than a rate of four percent a year.

(e) A fraternal benefit society shall hold advance payments received under this section in trust during the period of completing qualification. The society shall credit the advance payments to the mortuary or disability fund on account of the applicants and may not use any part of the payments for expenses. If the society does not complete its qualification within one year, as provided by this subchapter, the society shall return the advance payments to the applicants. (V.T.I.C. Art. 10.19, Subsecs. (c), (d).)

Source Law

(c) Upon receipt of said certificate from the department, said society may solicit from its members applications for insurance

benefits for the purpose of completing its qualification and shall collect from each applicant the amount of not less than one (1) regular monthly payment, in accordance with its table of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. No such society shall incur any liability other than for such advanced payments, nor issue any benefit certificate nor pay or allow, or offer or promise to pay or allow, to any person any death or disability benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred (500) lives for at least Two Thousand Dollars (\$2,000.00) each, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examination have been duly filed and approved by the chief medical examiner of such society; nor until there shall be established ten (10) subordinate lodges or branches into which said five hundred (500) applicants have been initiated; nor until there has been submitted to the department, under oath of the president and secretary or corresponding officers of such society, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions, which shall be sufficient to provide for meeting the mortuary obligation contracted, when valued for death benefits upon the basis of the National Fraternal Congress Table of Mortality, as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard, at the option of the society, and for disability benefits by tables based upon reliable experience and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four per cent (4%) per annum; nor

until it shall be shown to the department by the sworn statement of the treasurer or corresponding officer of such society, that at least five hundred (500) applicants have each paid in cash at least one (1) regular monthly payment as herein provided per One Thousand Dollars (\$1,000.00) of indemnity to be effected, which payments in the aggregate shall amount to at least One Hundred Fifty Thousand Dollars (\$150,000.00); all of which shall be credited to the mortuary or disability fund on account of such applicants and no part of which may be used for expenses.

(d) Said advanced payments shall, during the period of completing qualification, be held in trust, and if such qualification is not completed within one (1) year as hereinafter provided, returned to said applicants.

#### Revisor's Note

Subsection (c), V.T.I.C. Article 10.19, refers to the "rate of stated periodical contributions" of members of a fraternal benefit society. Subsequent provisions of V.T.I.C. Chapter 10 refer to payment of "contributions" and "designations" and to "periodical or other payments." Throughout this chapter, the revised law substitutes "premiums" for "contributions," "designations," and "periodical or other payments" because under Subdivision (6), V.T.I.C. Article 10.03-1, revised as Section 885.001(6), "premium" is defined as a required contribution that is payable under a benefit certificate or benefit contract.

#### Revised Law

Sec. 885.159. TERMINATION OF AUTHORITY UNDER PRELIMINARY CERTIFICATE OF AUTHORITY. (a) Unless a fraternal benefit society has qualified under this subchapter, a preliminary certificate of authority granted under Section 885.157 is void on the first anniversary of the date the certificate is issued.

(b) The department, on cause shown, may extend the period prescribed by Subsection (a). An extension may not exceed one year. (V.T.I.C. Art. 10.19, Subsec. (f).)

Source Law

(f) Unless the five hundred (500) applicants herein required have been secured and the organization has qualified as a fraternal benefit society as herein provided, the preliminary certificate granted under the provisions of this article shall be null and void after one (1) year from its date, or after such further period, not exceeding one (1) year, as may be authorized by the department upon cause shown.

Revisor's Note

Subsection (f), V.T.I.C. Article 10.19, provides that a fraternal benefit society's preliminary certificate of authority is void after one year "[u]nless the five hundred (500) applicants herein required have been secured and the organization has qualified as a fraternal benefit society as herein provided." The revised law omits the reference to 500 applicants as unnecessary because that concept is included within the meaning of qualification under this subchapter. See Section 885.158.

Revised Law

Sec. 885.160. ISSUANCE OF CERTIFICATE OF AUTHORITY.

(a) The department may make an examination and require information in addition to that required by Section 885.158(b) that the department considers advisable. On presentation of satisfactory evidence that a fraternal benefit society has complied with all provisions of law, the department shall issue to the society a certificate of authority.

(b) The certificate of authority issued is prima facie evidence of the qualification of the fraternal benefit society as of the date of the certificate.

(c) The department shall make a record of a certificate of authority issued under Subsection (a). A certified copy or duplicate of the department's record shall be accepted in evidence with the same effect as the original certificate. (V.T.I.C. Art. 10.19, Subsec. (e); Art. 10.22 (part).)

Source Law

[Art. 10.19]

(e) The department may make such examination and require such further information as it deems advisable; and upon

presentation of satisfactory evidence that the society has complied with all the provisions of law, the department shall issue to such society a certificate to that effect. Such certificate shall be prima facie evidence of the qualification of such society at the date of such certificate. The department shall cause a record of such certificate to be made and a certified copy of such record may be given in evidence with like effect as the original certificate.

Art. 10.22. . . . A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter.

Revisor's Note  
(End of Subchapter)

V.T.I.C. Article 10.22 in part provides that "[s]ocieties which are now authorized to transact business in this State may continue such business until their present licenses expire and the authority of such societies may thereafter be renewed annually." The revised law omits the portion of Article 10.22 that permits a fraternal benefit society that was authorized to engage in business on July 1, 1913, to continue under its "present license" as obsolete because those licenses have all expired. The revised law also omits the provision in Article 10.22 relating to annual renewal of licenses as repealed. Under Section 1, Article 1.14, revised in pertinent part as Section 801.053, a certificate of authority is valid until it is suspended or revoked. Section 2, Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, amending Article 1.14, repealed "[a]ll laws and parts of laws in conflict herewith . . . , including [Article] 10.22 . . . to the extent that they require periodic renewal of certificates of authority." The omitted law reads:

Art. 10.22. Societies which are now authorized to transact business in this State

may continue such business until their present licenses expire and the authority of such societies may thereafter be renewed annually for a period of not more than fifteen (15) months, and not extending more than ninety (90) days beyond the last day of February next after the date of its issuance. The license shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the society shall pay the Board of Insurance Commissioners Ten (\$10.00) Dollars. . . .

[Sections 885.161-885.200 reserved for expansion]

#### SUBCHAPTER E. FOREIGN FRATERNAL BENEFIT SOCIETIES

##### Revised Law

Sec. 885.201. CERTIFICATE OF AUTHORITY REQUIRED. A foreign fraternal benefit society organized and engaging in business before July 1, 1913, that was not authorized to engage in business in this state as of that date may not engage in business in this state without a certificate of authority from the commissioner. (V.T.I.C. Art. 10.23 (part).)

##### Source Law

Art. 10.23. No foreign society now transacting business, organized prior to the passage of this law, which is not now authorized to transact business in this State, shall transact any business herein without a license from the Board of Insurance Commissioners. . . .

##### Revisor's Note

V.T.I.C. Article 10.23 refers to a foreign fraternal benefit society "now" engaging in business and organized before "the passage of this law." The revised law substitutes the date July 1, 1913, for "now" and "the passage of this law" for the reason stated in Revisor's Note (2) to Section 885.002. Article 10.23 was enacted by the same act as V.T.I.C. Article 10.04, and the discussion in Revisor's Note (2) to Section 885.002 applies equally to Article 10.23.



Revised Law

Sec. 885.202. ADMISSION OF FOREIGN FRATERNAL BENEFIT SOCIETY. (a) To engage in business in this state, a foreign fraternal benefit society described by Section 885.201 must:

- (1) have the qualifications required of a domestic fraternal benefit society under this chapter; and
- (2) have its assets invested as required by the laws of the state, territory, district, province, or country in which the society is organized.

(b) A foreign fraternal benefit society described by Section 885.201 is entitled to a certificate of authority to engage in business in this state on filing with the department:

- (1) a certified copy of the society's charter or articles of association;
- (2) a copy of the fraternal benefit society's laws, certified by its secretary or corresponding officer;
- (3) a statement of the society's business;
- (4) a certificate from the proper official in the society's home state, province, or country showing that the society is legally organized;
- (5) a copy of the society's benefit contract;
- (6) information showing that the society's assets are invested as required by Subsection (a)(2); and
- (7) additional information the commissioner considers necessary to demonstrate the society's business and method of operation.

(c) A statement of business filed by a foreign fraternal benefit society under Subsection (b)(3) must:

- (1) be under oath of the society's president and secretary or corresponding officers;
- (2) be in the form required by the commissioner; and
- (3) be verified by an examination made by the supervising insurance official of the society's home state or another state satisfactory to the commissioner.

(d) A benefit contract filed by a foreign fraternal benefit society under Subsection (b)(5) must show that benefits are provided for by premiums paid by persons holding similar contracts.

(e) The commissioner shall issue a certificate of authority to a foreign fraternal benefit society that complies with Subsection (b). (V.T.I.C. Art. 10.23 (part).)

Source Law

Art. 10.23. . . . Any such society shall be entitled to a license to transact business within this State upon filing with said Board a duly certified copy of its charter or articles of association; a copy

of its Constitution and laws, certified by its secretary or corresponding officer; a power of attorney to the Chairman of the Board as hereinafter provided; a statement of its business under oath of its president and secretary or corresponding officers in the form required by said Board of Insurance Commissioners, duly verified by an examination made by the supervising insurance official of its home state or other state satisfactory to the Board of Insurance Commissioners; a certificate from the proper official in its home state, province or country that the society is legally organized; a copy of its contract, which must show that benefits are provided for by periodical or other payments by persons holding similar contracts; and upon furnishing the Board such other information as it may deem necessary to a proper exhibit of its business and plan of working, and upon showing that its assets are invested in accordance with the laws of the state, territory, district, province or country where it is organized, said Board shall issue a license to such society to do business in this State . . . . Any foreign society desiring admission to this State shall have the qualifications required of domestic societies organized under this chapter and have its assets invested as required by the laws of the state, territory, district, country or province where it is organized. . . .

Revisor's Note

V.T.I.C. Article 10.23 requires a foreign fraternal benefit society to file with the Board of Insurance Commissioners "a power of attorney to the Chairman of the Board as hereinafter provided." The "hereinafter" is a reference to V.T.I.C. Article 10.24. Article 10.24, which was repealed by Chapter 46, Acts of the 70th Legislature, Regular Session, 1987, required each domestic or foreign fraternal benefit society to appoint in writing the Chairman of the Board of Insurance Commissioners as the

society's agent for service of legal process. Service of process on a foreign fraternal benefit society is now governed by V.T.I.C. Article 1.36, revised in this code as Chapter 804. Accordingly, the revised law omits the reference to filing a power of attorney.

Revised Law

Sec. 885.203. REFUSAL TO ISSUE CERTIFICATE OF AUTHORITY TO FOREIGN FRATERNAL BENEFIT SOCIETY. (a) If the commissioner refuses to issue a certificate of authority to a foreign fraternal benefit society under Section 885.202, the commissioner shall:

- (1) make the refusal in writing;
- (2) file the refusal in the department's office; and
- (3) on request, provide a copy of the refusal and a statement of the commissioner's reasons for the refusal to the society's officers.

(b) The commissioner's refusal to issue a certificate of authority to a foreign fraternal benefit society for authority to engage in business in this state is reviewable by proper proceedings in a state court. (V.T.I.C. Art. 10.23 (part).)

Source Law

Art. 10.23. [No foreign society now transacting business, organized prior to the passage of this law, which is not now authorized to transact business in this State, shall transact any business herein without a license from the Board of Insurance Commissioners.] . . . When said Board refuses to license any society . . . , the Board shall reduce its decision to writing and file the same in its office, and shall furnish a copy thereof, together with a statement of its reasons, to the officers of the society, upon request, and the action of said Board of Insurance Commissioners shall be reviewable by proper proceedings in any court of competent jurisdiction within the State. . . .

Revisor's Note

V.T.I.C. Article 10.23 refers to proceedings in any court "of competent jurisdiction." Throughout this chapter, the revised law omits the quoted language as unnecessary because the general laws of civil jurisdiction determine which courts have

jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 885.204. NOTICE OF INTENT TO REVOKE FOREIGN FRATERNAL BENEFIT SOCIETY'S CERTIFICATE OF AUTHORITY. (a) The commissioner shall notify a foreign fraternal benefit society engaging in business under this chapter of the commissioner's determination if, following an investigation, the commissioner determines that the society:

- (1) has failed to comply with this chapter;
- (2) has exceeded its powers;
- (3) is not fulfilling its contracts in good faith; or
- (4) is engaging in business fraudulently.

(b) A notification under Subsection (a) must:

(1) state in writing the grounds of the commissioner's dissatisfaction; and

(2) require that the society, after reasonable notice and on the date stated in the notice, show cause why the society's certificate of authority should not be revoked.

(V.T.I.C. Art. 10.37 (part).)

Source Law

Art. 10.37. When the Board of Insurance Commissioners on investigation is satisfied that any foreign society transacting business under this law has exceeded its powers, or has failed to comply with any provision of this chapter, or is conducting business fraudulently, or is not carrying out its contracts in good faith, the Board shall notify the society of its findings, and state in writing the grounds of the Board's dissatisfaction, and after reasonable notice require said society, on a date named, to show cause why its license should not be revoked. . . .

Revised Law

Sec. 885.205. REVOCATION OF FOREIGN FRATERNAL BENEFIT SOCIETY'S CERTIFICATE OF AUTHORITY. (a) The commissioner may revoke a foreign fraternal benefit society's certificate of authority to engage in business in this state if, on the date stated in the notice under Section 885.204, the society:

- (1) has not, to the commissioner's satisfaction, removed the commissioner's objections; or
- (2) does not present good and sufficient reason why

its certificate of authority should not be revoked.

(b) Section 885.203 applies to a decision by the commissioner to revoke a foreign fraternal benefit society's authority to engage in business in this state as if it were a decision to refuse to issue a certificate of authority.

(V.T.I.C. Arts. 10.23 (part), 10.37 (part).)

Source Law

Art. 10.23. [No foreign society now transacting business, organized prior to the passage of this law, which is not now authorized to transact business in this State, shall transact any business herein without a license from the Board of Insurance Commissioners.] . . . When said Board [refuses to license any society] or revokes its authority to do business in this State, the Board shall reduce its decision to writing and file the same in its office, and shall furnish a copy thereof, together with a statement of its reasons, to the officers of the society, upon request, and the action of said Board of Insurance Commissioners shall be reviewable by proper proceedings in any court of competent jurisdiction within the State. . . .

Art. 10.37. . . . If, on the date named in said notice, such objections have not been removed to the satisfaction of said Board or the society does not present good and sufficient reason why its authority to transact business in this State should not at that time be revoked, the Board may revoke the authority of the society to continue business in this State. All decisions and findings of said Board made under the provisions of this article may be reviewed by proper proceedings in any court of competent jurisdiction.

Revised Law

Sec. 885.206. CONTINUANCE OF CONTRACTS FOLLOWING REVOCATION OF CERTIFICATE OF AUTHORITY. This subchapter may not be construed to prevent a foreign fraternal benefit society that has had its certificate of authority refused under former Article 10.23, Insurance Code, or a predecessor to that statute, or that has had its certificate of authority revoked, from continuing in good

faith each contract made in this state during the time the society was authorized to engage in business in this state. (V.T.I.C. Art. 10.23 (part).)

Source Law

Art. 10.23. . . . Nothing in this or the preceding article shall be construed as preventing any such society from continuing in good faith all contracts made in this State during the time such society was legally authorized to transact business herein.

Revisor's Note

V.T.I.C. Article 10.23 provides that "the preceding article," meaning V.T.I.C. Article 10.22, does not prevent a foreign fraternal benefit society from continuing in good faith all contracts made in this state during the time the society was legally authorized to transact business in this state. The revised law omits the reference to Article 10.22 as unnecessary. V.T.I.C. Article 10.22 formerly provided for annual renewal of a certificate of authority to transact business; as noted in the revisor's note to the end of Subchapter D, that provision has been repealed. The reference in Article 10.23 to Article 10.22 was intended to permit a foreign fraternal benefit society whose annual certificate of authority has expired to continue its contracts. However, since the law no longer contains an annual renewal requirement, once a foreign fraternal benefit society has been issued a certificate of authority to transact business in this state, its certificate remains in effect unless revoked. Accordingly, the revised law refers only to a foreign fraternal benefit society that has had its certificate of authority revoked.

Revisor's Note

(End of Subchapter)

V.T.I.C. Article 10.23 in part provides for the issuance to a foreign fraternal benefit society of an annual license to engage in business in this state. The

revised law omits this provision for the reason stated in the revisor's note to the end of Subchapter D. The omitted law reads:

Art. 10.23. [No foreign society now transacting business, organized prior to the passage of this law, which is not now authorized to transact business in this State, shall transact any business herein without a license from the Board of Insurance Commissioners. . . . said Board shall issue a license to such society to do business in this State] for the period of not more than fifteen (15) months, and not extending more than ninety (90) days beyond the last day of February next following the date of said certificate, and such license shall, upon compliance with the provisions of this chapter, be renewed annually. The license shall continue in full force and effect until the new license be issued or specifically refused. . . . For each such license or renewal the Society shall pay the Board of Insurance Commissioners Ten (\$10.00) Dollars. . . .

[Sections 885.207-885.250 reserved for expansion]

SUBCHAPTER F. POWERS AND DUTIES OF FRATERNAL  
BENEFIT SOCIETY

Revised Law

Sec. 885.251. GENERAL POWERS. A fraternal benefit society may:

- (1) make a constitution and bylaws for the government of the society, the admission of its members, the management of its affairs, and the setting and readjusting of premiums;
- (2) amend its constitution and bylaws; and
- (3) exercise other powers necessary and incidental to achieving its purposes. (V.T.I.C. Art. 10.19, Subsec. (h) (part).)

Source Law

(h) . . . Every such society shall have the power to make a constitution and bylaws for the government of the society, the admission of its members, the management of its affairs and the fixing and readjusting of the rates of contribution of its members from time to time; and it shall have the power to

change, alter, add to, or amend such constitution and bylaws and shall have such other powers as are necessary and incidental to carrying into effect its object and purposes.

Revisor's Note

(1) Subsection (h), V.T.I.C. Article 10.19, provides that a fraternal benefit society may readjust the rates of contribution of the society's members "from time to time." Throughout this chapter, the revised law omits "from time to time" as unnecessary. The authority to perform an act includes the authority to perform the act "from time to time."

(2) Subsection (h), V.T.I.C. Article 10.19, provides that a fraternal benefit society may "change, alter, add to, or amend" the society's constitution and bylaws. The references to "change," "alter," and "add to" are omitted from the revised law for the reason stated in the revisor's note to Section 885.061.

(3) Subsection (h), V.T.I.C. Article 10.19, refers to the "object and purposes" of a fraternal benefit society. The reference to "object" is omitted from the revised law because "object" is included within the meaning of "purposes."

Revised Law

Sec. 885.252. POWERS OF CERTAIN FRATERNAL BENEFIT SOCIETIES. (a) A fraternal benefit society engaged in business in this state on July 1, 1913, may exercise:

(1) each right conferred by this chapter; and  
(2) if the society is incorporated, each right, power, or privilege exercised or possessed as of July 1, 1913, by the society under its charter or articles of incorporation consistent with this chapter.

(b) A fraternal benefit society engaged in business in this state on July 1, 1913, that is a voluntary association may incorporate under this chapter.

(c) A fraternal benefit society organized as of July 1, 1913, is not required to reincorporate under this chapter and may amend the society's articles of incorporation in the manner provided in the articles or the fraternal benefit society's laws. A society shall file an amendment described by this subsection with the department. The amendment becomes operative on filing



unless a later time is provided in the amendment or in the fraternal benefit society's articles of incorporation or laws. (V.T.I.C. Art. 10.20.)

Source Law

Art. 10.20. Any society now engaged in transacting business in this State may exercise all of the rights conferred hereby, and all of the rights, powers and privileges now exercised or possessed by it under its charter or articles of incorporation not inconsistent with this chapter, if incorporated; or if it be a voluntary association, it may incorporate hereunder. But no society already organized shall be required to reincorporate hereunder, and any such society may amend its articles of incorporation from time to time in the manner provided therein or in its Constitution and laws, and all such amendments shall be filed with the Board and shall become operative upon such filing, unless a later time be provided in such amendments or in its articles of incorporation, Constitution or laws.

Revisor's Note

V.T.I.C. Article 10.20 refers to a "society now engaged in transacting business in this State." The revised law substitutes the date July 1, 1913, for "now" for the reason stated in Revisor's Note (2) to Section 885.002. Article 10.20 was enacted by the same act as V.T.I.C. Article 10.04, and the discussion in Revisor's Note (2) to Section 885.002 applies equally to Article 10.20.

Revised Law

Sec. 885.253. PRINCIPAL OFFICE OF DOMESTIC FRATERNAL BENEFIT SOCIETY. A domestic fraternal benefit society shall have its principal office in this state. (V.T.I.C. Art. 10.25 (part).)

Source Law

Art. 10.25. Each domestic society shall have its principal office in this State, . . . .

Revised Law

Sec. 885.254. IMMUNITY. (a) A director, officer, employee, member, or volunteer of a fraternal benefit society serving without compensation is not personally liable for damages resulting from an act or omission in the exercise of judgment or discretion in connection with the duties of that person for the society unless the act or omission involved wilful or wanton misconduct.

(b) This section does not limit a fraternal benefit society's direct or indirect liability. (V.T.I.C. Art. 10.26, Subsec. (i).)

Source Law

(i) A director, officer, employee, member, or volunteer of a society serving without compensation is not personally liable for damages resulting from an act or omission in the exercise of judgment or discretion in connection with the duties of that person for the society unless the act or omission involved wilful or wanton misconduct. This subsection does not limit a society's direct or indirect liability.

Revised Law

Sec. 885.255. INDEMNIFICATION OR REIMBURSEMENT. (a) A fraternal benefit society may indemnify and reimburse a person for expenses reasonably incurred by, and liabilities imposed on, that person in connection with or arising out of a proceeding, whether civil, criminal, administrative, or investigative, in which the person is involved, or in connection with or arising out of a threat of a proceeding against that person, because that person is or was a director, officer, employee, or agent of:

(1) the society; or

(2) a firm, corporation, or organization with which the person served in any capacity at the request of the society.

(b) The right of indemnification and reimbursement under Subsection (a) is not exclusive of other rights to which a person may be entitled as a matter of law and inures to the benefit of the person's devisees, legatees, heirs, and estate. (V.T.I.C. Art. 10.26, Subsecs. (b), (g).)

Source Law

(b) A society may indemnify and reimburse a person for expenses reasonably incurred by, and liabilities imposed on, that person in connection with or arising out of an action, suit, or other proceeding, whether

civil, criminal, administrative, or investigative, in which the person is involved, or in connection with or arising out of a threat of a proceeding against that person, because that person is or was a director, officer, employee, or agent of:

- (1) the society; or
- (2) a firm, corporation, or organization with which the person served in any capacity at the request of the society.

(g) The right of indemnification and reimbursement under this article is not exclusive of other rights to which a person may be entitled as a matter of law and inures to the benefit of the person's devisees, legatees, heirs, and estate.

Revisor's Note

Subsection (b), V.T.I.C. Article 10.26, refers to an "action, suit, or other proceeding." The revised law omits the references to "action" and "suit" because in context, those terms are included within the meaning of "proceeding."

Revised Law

Sec. 885.256. INDEMNIFICATION OR REIMBURSEMENT IN RELATION TO BREACH OF DUTY PROHIBITED. (a) Except as provided by Subsection (b), a person may not be indemnified or reimbursed under Section 885.255 in relation to:

(1) a matter in a proceeding in which the person is finally adjudged guilty of breach of a duty as a director, officer, employee, or agent of the fraternal benefit society; or

(2) an agreement that settles:

(A) a matter in a proceeding described by Subdivision (1); or

(B) the threat of a proceeding involving the person's alleged breach of a duty as a director, officer, employee, or agent of a fraternal benefit society.

(b) A fraternal benefit society may indemnify or reimburse a person in relation to a matter described by Subsection (a) only if the supreme governing body, the board of directors, or a court determines that:

(1) the person acted in good faith for a purpose the person reasonably believed to be in or not opposed to the best interests of the society; and

(2) in a criminal proceeding, the person had no reasonable cause to believe that the person's conduct was

unlawful.

(c) A determination by a supreme governing body or board of directors under Subsection (b) must be made by majority vote of a quorum consisting of persons who were not parties to the proceeding under review.

(d) The termination of a proceeding by judgment, order, settlement, or conviction or on a plea of no contest does not create a conclusive presumption that a person does not meet the standard of conduct required to justify indemnification and reimbursement. (V.T.I.C. Art. 10.26, Subsecs. (c), (d), (e), (f).)

Source Law

(c) Except as provided by Subsection (d) of this article, a person may not be indemnified or reimbursed in relation to:

(1) a matter in an action, suit, or other proceeding in which the person is finally adjudged guilty of breach of a duty as a director, officer, employee, or agent of the society; or

(2) an agreement that settles:

(A) a matter in an action, suit, or other proceeding described by Subdivision (1) of this subsection; or

(B) the threat of the proceeding.

(d) A society may indemnify or reimburse a person in relation to a matter described by Subsection (c) of this article only if the supreme governing body, the board of directors, or a court of competent jurisdiction determines that:

(1) the person acted in good faith for a purpose the person reasonably believed to be in or not opposed to the best interests of the society; and

(2) in a criminal action or proceeding, the person had no reasonable cause to believe that the person's conduct was unlawful.

(e) A determination by a supreme governing body or board of directors under Subsection (d) of this article must be made by majority vote of a quorum consisting of persons who were not parties to the action, suit, or other proceeding under review.

(f) The termination of an action or

other proceeding by judgment, order, settlement, or conviction or on a plea of no contest does not create a conclusive presumption that a person does not meet the standard of conduct required in order to justify indemnification and reimbursement.

Revisor's Note

Subsections (c)-(f), V.T.I.C. Article 10.26, refer to an "action, suit, or other proceeding" and an "action or other proceeding." The revised law omits the references to "action" and "suit" for the reason stated in the revisor's note to Section 885.255.

Revised Law

Sec. 885.257. INSURANCE FOR DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS. (a) A fraternal benefit society may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee, or agent of the society or who is or was serving at the request of the society as a director, officer, employee, or agent of another firm, corporation, or organization against a liability asserted against that person or incurred by that person in any capacity or arising out of that person's status as a director, officer, employee, or agent of the society or the other firm, corporation, or organization.

(b) A fraternal benefit society may purchase and maintain insurance under this section regardless of whether the society has the power to indemnify or reimburse the person with respect to the covered liability under Sections 885.255 and 885.256. (V.T.I.C. Art. 10.26, Subsec. (h).)

Source Law

(h) A society may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee, or agent of the society or who is or was serving at the request of the society as a director, officer, employee, or agent of another firm, corporation, or organization against a liability asserted against that person or incurred by that person in any capacity or arising out of that person's status as a director, officer, employee, or agent of the society or the other firm, corporation, or organization. A society may purchase and maintain insurance under this subsection regardless of whether the society has the

power to indemnify or reimburse the person with respect to the covered liability under this article.

Revised Law

Sec. 885.258. MANAGEMENT AND USE OF ASSETS AND FUNDS. (a) A fraternal benefit society shall hold, invest, and disburse all assets for the use and benefit of the society. A member or beneficiary may not have or acquire individual rights in the assets of a fraternal benefit society or become entitled to any apportionment or surrender of any part of a society's assets except as provided by a benefit contract.

(b) A fraternal benefit society may create, maintain, invest, disburse, and apply any special fund necessary to implement any purpose permitted by the fraternal benefit society's laws.

(c) A fraternal benefit society may create, maintain, invest, disburse, and apply an emergency surplus or other similar fund in accordance with the fraternal benefit society's laws. Unless otherwise provided by a benefit contract, a fraternal benefit society shall hold, invest, and disburse a fund created under this subsection for the use and benefit of the society. A member or beneficiary may not have or acquire individual rights in a fund created under this subsection or become entitled to any apportionment or the surrender of any part of the fund except as provided by Section 885.301. (V.T.I.C. Art. 10.16 (part); Art. 10.18, Subsecs. (a), (b).)

Source Law

Art. 10.16. Any society may create, maintain, invest, disburse and apply an emergency surplus or other similar fund in accordance with its laws. Unless otherwise provided in the contract, such funds shall be held, invested and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment of the surrender of any part thereof, except as provided in Article 10.05 of this chapter. . . .

Art. 10.18. (a) All assets shall be held, invested and disbursed for the use and benefit of the society and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part

thereof, except as provided in the contract.

(b) A society may create, maintain, invest, disburse and apply any special fund or funds necessary to carry out any purpose permitted by the laws of such society.

#### Revised Law

Sec. 885.259. SOURCE OF FUNDS. (a) A fraternal benefit society shall derive the funds from which the society pays benefits and the funds from which the society defrays its expenses from:

- (1) premiums paid by members of the society; and
- (2) accretions of those funds.

(b) A domestic or foreign fraternal benefit society may not engage in business in this state unless the society provides for stated premiums sufficient to permit meeting the obligations contracted, when valued in accordance with the reserving standards specified by this chapter. (V.T.I.C. Art. 10.16 (part).)

#### Source Law

Art. 10.16. . . . The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed shall be derived from periodical or other payments by the members of the society and accretions of said funds. No society, domestic or foreign, shall transact business in this State which does not provide for stated periodical contributions sufficient to provide for meeting the obligations contracted, when valued in accordance with the reserving standards specified in this chapter. . . .

#### Revised Law

Sec. 885.260. SPECIFIED PAYMENTS. (a) A fraternal benefit society may provide in the fraternal benefit society's laws and benefit certificates for specified payments on account of the expense or general fund.

(b) A payment under this section may or may not be mingled with the general fund of the fraternal benefit society as provided by the society's constitution and bylaws. (V.T.I.C. Art. 10.10.)

#### Source Law

Art. 10.10. Any society shall have the right to provide in its laws and the

certificate issued hereunder for specified payments on account of the expense or general fund, which payments shall or shall not be mingled with the general fund of the society as its constitution and by-laws may provide.

Revised Law

Sec. 885.261. CONTROL OF FUND BY LODGE. (a) This section applies if the constitution and bylaws of the grand lodge or governing body of a fraternal benefit society:

(1) provide that all or part of the beneficiary, mortuary, or insurance fund of the society that is paid by or collected from the members of a lodge may be retained in the custody of and controlled and managed by the lodge; and

(2) designate an officer of the lodge to have custody and control of a fund described by Subdivision (1) and authority to loan or invest the fund.

(b) A lodge officer having custody and control of a fund described by Subsection (a)(1) shall execute a bond or other written instrument to be prescribed and approved in terms and amount by the commissioner to indemnify the fund against waste, depletion, or loss. The lodge officer shall file the bond or other written instrument with the department, if required to do so by the department.

(c) A fund secured as provided by Subsection (b) is exempt from this chapter. (V.T.I.C. Art. 10.17 (part).)

Source Law

Art. 10.17. . . . In case the Constitution and by-laws of the Grand Lodge or governing body of any such association provides that all or any part of the beneficiary or mortuary or insurance fund of such association that is paid in by or collected from the members of such subordinate or local lodge may be retained in the custody of and controlled and managed by such subordinate or local lodge, and designate what officer of such subordinate or local lodge shall have the custody and control of such fund and authorize such local officers to loan or invest the same, and such local officer shall have executed and filed, and shall from time to time when required by the Board of Insurance Commissioners, file with the Board such bond or other written instrument to be prescribed and approved in terms and amount by such Board as will



indemnify such fund against waste, depletion or loss through loans, investment or otherwise, then such fund so secured shall be exempt from the provisions of this chapter.

Revisor's Note

V.T.I.C. Article 10.17 refers to a bond to indemnify a beneficiary, mortuary, or insurance fund of a lodge of a fraternal benefit society against "waste, depletion or loss through loans, investment or otherwise." The revised law omits "through loans, investment or otherwise" as unnecessary because the quoted language describes any type of loss and does not act as a limitation.

Revised Law

Sec. 885.262. INVESTMENT OF FRATERNAL BENEFIT SOCIETY FUNDS. (a) Except as provided by Subsection (b), a fraternal benefit society may invest its funds only in securities permitted by state law for the investment of the assets of life insurance companies.

(b) A foreign fraternal benefit society authorized to or seeking to engage in the business of insurance in this state that invests its funds in accordance with the laws of the state in which the society is incorporated is considered to meet the requirements of this chapter for the investment of funds.  
(V.T.I.C. Art. 10.17 (part).)

Source Law

Art. 10.17. Every society shall invest its funds only in securities permitted by the laws of this State for the investment of the assets of life insurance companies. Any foreign society permitted or seeking to do business in this State which invest funds in accordance with the laws of the state in which it is incorporated shall be held to meet the requirements of this chapter for the investment of funds. . . .

Revised Law

Sec. 885.263. TREATMENT OF DEFERRED CLAIMS. (a) A deferred payment or an installment of a claim is considered to be a fixed liability on the occurrence of the contingency on which the payment or installment is to be paid. The amount of the liability is the present value of the future payment or installment at the rates of interest and mortality assumed by the

fraternal benefit society for valuation.

(b) A fraternal benefit society shall maintain a fund sufficient to meet each fixed liability under Subsection (a) regardless of proposed future collections to meet the liability. (V.T.I.C. Art. 10.16 (part).)

Source Law

Art. 10.16. . . . Deferred payments or installments of claims shall be considered as fixed liabilities on the happenings of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments or installments upon the rate of interest and mortality assumed by the society for valuation, and every society shall maintain a fund sufficient to meet such liability regardless of proposed future collections to meet any such liabilities.

Revisor's Note

(End of Subchapter)

Subsection (g), V.T.I.C. Article 10.19, in part provides that Article 10.19 "shall not apply to societies specifically exempted from the provisions of Chapter 10 of the Insurance Code." The revised law omits this provision as unnecessary because Subsection (e), V.T.I.C. Article 10.12, and V.T.I.C. Article 10.38, revised in relevant part as Section 885.004, provide that Chapter 10, including Article 10.19, does not apply to certain fraternal benefit societies. The omitted law reads:

(g) Provided, however, that this Article shall not apply to societies specifically exempted from the provisions of Chapter 10 of the Insurance Code and . . . .

[Sections 885.264-885.300 reserved for expansion]

SUBCHAPTER G. BENEFITS PROVIDED BY FRATERNAL  
BENEFIT SOCIETIES

Revised Law

Sec. 885.301. TYPES OF BENEFITS PERMITTED. (a) A fraternal benefit society may provide for the payment of:

(1) death benefits in any form;

- (2) endowment benefits;
- (3) annuity benefits;
- (4) benefits for temporary or permanent disability resulting from disease or accident;
- (5) benefits for hospital, medical, or nursing expenses resulting from sickness, bodily infirmity, or accident;
- (6) benefits for the erection of a monument or tombstone to the memory of a deceased member;
- (7) funeral benefits; and
- (8) any other benefit that may be provided by a life, accident, or health insurance company and that is:

- (A) offered in compliance with the provisions of Chapter 3 and Title 7 applicable to a life, accident, or health insurance company; and

- (B) consistent with this chapter.

(b) A fraternal benefit society shall:

- (1) specify in the fraternal benefit society's laws or rules those persons to whom a benefit certificate may be issued or who may be covered by benefits; and

- (2) make the provision of those benefits consistent with the provision of benefits to members and their beneficiaries. (V.T.I.C. Art. 10.05, Subsecs. (a), (b).)

Source Law

Art. 10.05. (a) A society authorized to do business in this State may provide for the payment of:

- (1) Death benefits in any form;
- (2) Endowment benefits;
- (3) Annuity benefits;
- (4) Temporary or permanent disability benefits as a result of disease or accident;

- (5) Hospital, medical or nursing benefits due to sickness or bodily infirmity or accident;

- (6) Monument or tombstone benefits to the memory of deceased members;

- (7) Funeral benefits; and

- (8) Any other benefit that may be provided by a life, accident, or health insurance company, provided that the benefit is:

- (A) offered in compliance with Chapter 3 of this code; and

- (B) consistent with this chapter.

(b) A society shall:

- (1) specify in its laws or rules those persons to whom a certificate may be issued or who may be covered by benefits; and
- (2) make the provision of those benefits consistent with the provision of benefits to members and their beneficiaries.

Revisor's Note

(1) Subsection (a), V.T.I.C. Article 10.05, provides that a fraternal benefit society "authorized to do business in this State" may provide for the payment of certain types of benefits. Subsequent provisions of V.T.I.C. Chapter 10 contain similar language. Throughout this chapter, the revised law omits the quoted language as unnecessary. V.T.I.C. Article 10.19, applicable to domestic fraternal benefit societies and revised as Sections 885.151-885.160 and 885.501, and V.T.I.C. Article 10.23, applicable to foreign fraternal benefit societies and revised as Sections 885.201-885.203, prohibit a fraternal benefit society from engaging in business in this state without obtaining a certificate of authority. Since providing for the payment of benefits is "engaging in business," it is clear without an express statement to that effect that only a fraternal benefit society "authorized to do business in this State" may provide for the payment of benefits.

(2) Subsection (a)(8), V.T.I.C. Article 10.05, refers to "[a]ny other benefit . . . provided by a life, accident, or health insurance company, provided that the benefit is . . . offered in compliance with Chapter 3 of this code." Some of the provisions of Chapter 3 that govern the type of coverages provided by life, accident, or health insurance companies are revised as portions of Title 7 of this code. The revised law is drafted accordingly.

Revised Law

Sec. 885.302. ISSUANCE OF BENEFIT CONTRACTS ON VARIABLE BASIS. A fraternal benefit society may, as provided by a resolution of its supreme governing body, establish and operate one or more separate accounts and issue benefit contracts on a variable basis, subject to laws regulating a life insurance

company that establishes those types of accounts and issues those types of contracts. To comply with applicable federal or state laws or rules, the society may:

(1) issue on a variable basis contracts to which Sections 885.306(b) and (c) and 885.311(a) do not apply; and

(2) adopt special procedures for conducting the business and affairs of a separate account and provide special voting and other rights for a person having beneficial interests in a separate account, including special procedures and rights relating to:

- (A) investment policy;
- (B) investment advisory services;
- (C) selection of certified public accountants;

and

(D) selection of a committee to manage the business and affairs of the account. (V.T.I.C. Art. 10.18, Subsec. (c).)

#### Source Law

(c) A society may, pursuant to a resolution of its supreme governing body, establish and operate one or more separate accounts and issue benefit contracts on a variable basis, subject to the provisions of law regulating a life insurance company that establishes those types of accounts and issues those types of contracts. In order to comply with applicable federal or state laws or rules, the society may:

(1) issue contracts on a variable basis to which Articles 10.15(a) and 10.30(e) of this chapter do not apply; and

(2) adopt special procedures for the conduct of the business and affairs of a separate account and provide special voting and other rights for a person having beneficial interests in a separate account, including special procedures and rights relating to:

- (A) investment policy;
- (B) investment advisory services;

(C) selection of certified public accountants; and

(D) selection of a committee to manage the business and affairs of the account.

Revised Law

Sec. 885.303. BENEFITS FOR CHILDREN. (a) A fraternal benefit society may provide by its laws, in addition to other benefits provided for by the fraternal benefit society's laws, for insurance or annuities, or insurance and annuities, on the lives of children of any age, on the application of an adult individual related to or interested in the child, as provided by the fraternal benefit society's laws.

(b) A life insurance benefit contract issued on the life of an individual who is younger than a fraternal benefit society's minimum age for adult membership may provide for transfer of control or ownership to the insured at an age specified in the benefit certificate. A fraternal benefit society may require approval of an application for membership in order to make the transfer and may provide in all other respects for control of the benefit certificate and rights, obligations, and liabilities incident and connected to the certificate. Ownership rights under the benefit certificate before a transfer must be specified in the certificate. (V.T.I.C. Art. 10.06 (part); Art. 10.15, Subsec. (f).)

Source Law

Art. 10.06. Any fraternal benefit society authorized to do business in this State may provide in its laws, in addition to other benefits provided for therein, for insurance, annuities, or for insurance and annuities, upon the lives of children at any age, upon the application of some adult person related to or interested in said child as the laws of such society may provide. . . .

[Art. 10.15]

(f) A life insurance benefit contract issued on the life of a person who is younger than the society's minimum age for adult membership may provide for transfer of control or ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect the transfer and may provide in all other respects for the regulation, government, and control of certificates and rights, obligations, and liabilities incident and connected to the certificate. Ownership rights under the certificate before a transfer must be

specified in the certificate.

Revisor's Note

Subsection (f), V.T.I.C. Article 10.15, refers to the "regulation, government, and control" of benefit certificates issued by a fraternal benefit society. Throughout this chapter, such references to "regulation" and "government" are omitted from the revised law because in this context, "regulation" and "government" are included within the meaning of "control."

Revised Law

Sec. 885.304. BENEFICIARIES. (a) The owner of a benefit contract may change the beneficiary at any time in accordance with a fraternal benefit society's laws or rules unless the owner waives that right by specifically requesting in writing that the beneficiary designation be irrevocable.

(b) A fraternal benefit society may, through the fraternal benefit society's laws or rules, limit the scope of beneficiary designations and shall provide that a person whose designation as a beneficiary is revocable may not have or obtain a vested interest in the proceeds, in conformity with the benefit contract.

(c) If, at the death of an insured, a lawful beneficiary to whom the proceeds of the benefit contract are payable does not exist under the benefit contract, a fraternal benefit society shall pay the amount of the benefit under the benefit contract:

- (1) to the personal representative of the insured; or
- (2) if the owner of the benefit certificate is a person other than the insured, to the owner of the certificate.

(d) Subsection (c) does not apply to the extent funeral benefits may be paid under the benefit contract. (V.T.I.C. Art. 10.12-1.)

Source Law

Art. 10.12-1. (a) The owner of a benefit contract may change the beneficiary at any time in accordance with the laws or rules of the society unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. A society may, through its laws or rules, limit the scope of beneficiary designations and shall provide that a person whose designation as beneficiary is revocable may not have or obtain a vested interest in the proceeds, in conformity with the benefit

contract.

(b) If, at the death of the deceased insured, a lawful beneficiary to whom the proceeds of the benefit contract are payable does not exist under the benefit contract, the amount of a benefit under a benefit contract shall be paid:

(1) to the personal representative of the deceased insured; or

(2) if the owner of the certificate is a person other than the deceased insured, to the owner of the certificate.

(c) Subsection (b) of this article does not apply to the extent funeral benefits may be paid under the benefit contract.

#### Revised Law

Sec. 885.305. ORGANIZATION AS BENEFICIARY. A fraternal benefit society may provide in the fraternal benefit society's laws for the issuance to its members of benefit certificates under which an association, society, or corporation that is organized and operated for religious, eleemosynary, or educational purposes is named as beneficiary. (V.T.I.C. Art. 10.14.)

#### Source Law

Art. 10.14. Fraternal benefit societies, heretofore or hereafter incorporated by the State of Texas or licensed to do business therein, shall be authorized to provide in their constitutions, by-laws or fundamental laws for the issuance of benefit certificates to their members, wherein any association, society or corporation, organized and operated for religious, eleemosynary or educational purposes, may be named as beneficiary.

#### Revisor's Note

V.T.I.C. Article 10.14 refers to fraternal benefit societies "heretofore or hereafter incorporated by the State of Texas or licensed to do business therein." The revised law omits "heretofore or hereafter" as unnecessary because that describes any fraternal benefit society authorized to transact business in this state. The revised



law also omits "incorporated by the State of Texas or licensed to do business therein" as unnecessary. The quoted language was included in V.T.I.C. Article 10.14 to make the provision apply to both domestic and foreign fraternal benefit societies; in this chapter, absent language limiting a provision to one type of fraternal benefit society, it applies to both.

Revised Law

Sec. 885.306. BENEFIT CERTIFICATE. (a) A fraternal benefit society may not deliver or issue for delivery in this state a benefit certificate unless the form of the certificate has been filed under Article 3.42.

(b) Each benefit certificate issued by a fraternal benefit society must:

(1) specify the amount of benefits provided under the certificate;

(2) state the amount of premiums that are payable under the certificate; and

(3) provide that the certificate, the society's charter or articles of incorporation or, if the society is a voluntary association, the society's articles of association, the fraternal benefit society's laws, the application for membership and medical examination, signed by the applicant, and all amendments to each of those constitute the agreement between the society and the member.

(c) An amendment to a fraternal benefit society's charter, articles of incorporation or association, or laws made or enacted after the issuance of a benefit certificate:

(1) binds the member and the member's beneficiaries; and

(2) controls the agreement in all respects as if the amendment had been in force at the time of the application for membership.

(d) A life, accident, health, or disability insurance benefit certificate or annuity benefit certificate issued by a fraternal benefit society must meet the requirements applicable to similar policies issued by an insurer in this state that are not inconsistent with this chapter as determined by rule of the commissioner.

(e) A copy of a document described by Subsection (b)(3), certified by a fraternal benefit society's secretary or corresponding officer, shall be admitted as evidence of the terms of the agreement between the society and the member. (V.T.I.C. Art. 10.15, Subsecs. (a), (b), (d).)

Source Law

Art. 10.15. (a) Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation, or, if a voluntary association, the articles of association, the constitution and laws of the society, and the application for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member, and copies of the same, certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof. Any changes, additions or amendments to said charter or articles of incorporation, or articles of association, or constitution or laws duly made or enacted subsequent to the issuance of the benefit certificates shall bind the member and the member's beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership.

(b) A certificate may not be delivered or issued for delivery in this state unless the form of the certificate has been filed with the department under Article 3.42 of this code. A life, accident, health, or disability insurance certificate or annuity certificate issued by a society must meet the requirements applicable to similar policies issued by an insurer in this state that are not inconsistent with this chapter as determined by rule of the commissioner.

(d) Each certificate must state the amount of premiums that are payable under the certificate.

Revised Law

Sec. 885.307. GRACE PERIOD. A fraternal benefit society shall include in the terms of a benefit certificate a grace period of at least one month for payment of premiums. (V.T.I.C.

Art. 10.15, Subsec. (c).)

Source Law

(c) A society shall include in the terms of a certificate a grace period of at least one month for payment of premiums.

Revised Law

Sec. 885.308. ASSIGNMENT OF LIFE INSURANCE BENEFIT CONTRACT. A fraternal benefit society may specify the terms for the assignment of a life insurance benefit contract. (V.T.I.C. Art. 10.15, Subsec. (g).)

Source Law

(g) A society may specify the terms and conditions for the assignment of a life insurance benefit contract.

Revised Law

Sec. 885.309. NONFORFEITURE BENEFITS. (a) The value of a nonforfeiture benefit provided under a benefit certificate issued before January 1, 2001, must comply with the law applicable to the certificate immediately before that date.

(b) The value of a nonforfeiture benefit provided under a benefit certificate issued on or after January 1, 2001, is computed as provided under:

(1) the provisions of Chapters 1105 and 1107 applicable to life insurance companies issuing policies containing similar benefits; and

(2) the applicable tables required by those chapters. (V.T.I.C. Art. 10.31.)

Source Law

Art. 10.31. (a) For a certificate providing a nonforfeiture benefit that is issued before January 1, 2001, the value of the nonforfeiture benefit granted under the certificate must comply with the law applicable to the certificate immediately before that date.

(b) For a certificate providing a nonforfeiture benefit that is issued on or after January 1, 2001, the value of the nonforfeiture benefit granted under the certificate shall be computed as provided under the provisions of Articles 3.44a and 3.44b of this code applicable to life insurance companies issuing policies

containing similar benefits and under the applicable tables established under those articles.

Revised Law

Sec. 885.310. ENFORCING PAYMENT OF PREMIUMS; CONTROL OF BENEFIT CERTIFICATES. A fraternal benefit society may provide for:

- (1) enforcing payment of premiums;
- (2) designating beneficiaries; and
- (3) controlling benefit certificates and all rights, obligations, and liabilities incident to the certificates not in conflict with this chapter. (V.T.I.C. Art. 10.09.)

Source Law

Art. 10.09. Any society shall have the full power to provide for means of enforcing payment of contributions, designations, and in all other respects for the regulation, government and control of such certificate and all rights, obligations and liabilities incident thereto and connected herewith not at variance with the provisions of this chapter.

Revisor's Note

V.T.I.C. Article 10.09 refers to "rights, obligations and liabilities incident thereto and connected herewith" in reference to benefit certificates. The reference to "connected herewith" is omitted from the revised law because "connected herewith" is included within the meaning of "incident thereto."

Revised Law

Sec. 885.311. DEFICIENCY PAYMENTS. (a) A fraternal benefit society shall provide in the fraternal benefit society's laws that if the society's reserves for any class of the society's benefit certificates become impaired, the society's supreme governing body or board of directors may require the certificate holders to pay the society an equitable proportion of the deficiency as determined by the governing body or board.

(b) If a holder of a benefit certificate does not pay a fraternal benefit society the amount determined under Subsection (a), the holder, in a manner determined by the society, may elect to accept:

- (1) the amount determined under Subsection (a) as an indebtedness against the certificate, with the amount drawing

interest at a rate that does not exceed the rate specified for a certificate loan under a certificate that has cash value;

(2) a proportionate reduction in the benefits payable under the certificate; or

(3) a combination of the limitations on the certificate described by Subdivisions (1) and (2).

(c) A fraternal benefit society may determine a presumed election for a holder of a benefit certificate under Subsection (b) if the holder fails to make an election. (V.T.I.C. Art. 10.30, Subsecs. (e), (f), (g).)

Source Law

(e) A society shall provide in the society's laws that if the society's reserves for any class of the society's certificates become impaired, the society's supreme governing body or board of directors may require the certificate holder to pay the society an equitable proportion of the deficiency as determined by the governing body or board.

(f) If the certificate holder does not pay the society the amount determined under Subsection (e) of this article, the holder, in a manner determined by the society, may elect to accept:

(1) the amount determined under Subsection (e) of this article as an indebtedness against the certificate, with the amount drawing interest at a rate that does not exceed the rate specified for a certificate loan under a certificate that has cash value;

(2) a proportionate reduction in the benefits under the certificate; or

(3) a combination of the limitations on the certificate as described by Subdivisions (1) and (2) of this subsection.

(g) The society may determine a presumed election for the certificate holder under Subsection (f) of this article if the holder fails to make an election.

Revised Law

Sec. 885.312. CONTINUATION OF BENEFIT CERTIFICATE ON  
EXPULSION OR SUSPENSION OF MEMBER. If a fraternal benefit  
society's laws provide for expulsion or suspension of a member,

the benefit certificate must provide that a member who is expelled or suspended may maintain the certificate in force by continuing payment of the required premium unless the expulsion or suspension:

- (1) is for nonpayment of a premium; or
- (2) occurs within the contestable period of the benefit contract and is for material misrepresentation in the application for membership or insurance. (V.T.I.C. Art. 10.15, Subsec. (e).)

Source Law

(e) If the laws of the society provide for expulsion or suspension of a member, the certificate must provide that a member who is expelled or suspended may maintain the certificate in force by continuing payment of the required premium, unless the expulsion or suspension:

- (1) is for nonpayment of a premium; or
- (2) occurs within the contestable period of the benefit contract and is for material misrepresentation in the application for membership or insurance.

Revised Law

Sec. 885.313. CONTINUATION OF BENEFIT CERTIFICATE ISSUED ON CHILD. If the membership in a fraternal benefit society of a person responsible for the support of a child on whose account a benefit certificate has been issued terminates, the certificate may be continued for the benefit of:

- (1) the child's estate, if payment of the premiums is continued; or
- (2) any other person responsible for the support and maintenance of the child, if the person assumes the payment of the required premiums. (V.T.I.C. Art. 10.11.)

Source Law

Art. 10.11. In the event of the termination of membership in the society by the person responsible for the support of any child, on whose account a certificate may have been issued, as provided herein, the certificate may be continued for the benefit of the estate of the child, provided, the contributions are continued, or for the benefit of any other person responsible for the support and maintenance of such child,

who shall assume the payment of the required contributions.

Revised Law

Sec. 885.314. RESPONSIBILITY FOR PAYMENT OF BENEFITS. (a) An officer or member of the supreme, the grand, or any subordinate body of an incorporated fraternal benefit society is not individually liable for the payment of any disability or death benefit provided for by the fraternal benefit society's laws and contracts.

(b) Benefits are payable only out of the fraternal benefit society's funds and in the manner provided by the fraternal benefit society's laws. (V.T.I.C. Art. 10.26, Subsec. (a).)

Source Law

Art. 10.26. (a) Officers and members of the supreme, grand or any subordinate body of an incorporated society are not individually liable for the payment of any disability or death benefit provided for in the laws and agreements of the society. Those payments are payable only out of the funds of the society and in the manner provided by its law.

Revised Law

Sec. 885.315. DAMAGES FOR FAILURE TO TIMELY PAY BENEFITS. A fraternal benefit society that is liable for a loss and that does not pay benefits before the 61st day after the date of the demand for payment is liable to the holder of the benefit certificate, in addition to the amount of the loss, for damages of 12 percent of the amount of the loss and reasonable attorney's fees for the prosecution and collection of the loss. (V.T.I.C. Art. 10.13.)

Source Law

Art. 10.13. In all cases where a loss occurs and the fraternal benefit society liable therefor shall fail to pay the same within sixty (60) days after the demand therefor, such society shall be liable to pay the holder of such policy, in addition to the amount of the loss, twelve (12%) per cent damages on the amount of such loss together with reasonable attorney's fees for the prosecution and collection of such loss.

Revised Law

Sec. 885.316. EXEMPTION OF BENEFITS. Money or another

benefit or charity to be paid or provided by a fraternal benefit society, before or after payment is not subject to attachment, garnishment, or other process and may not be seized or applied by any legal or equitable process or operation of law to pay any debt or liability of a member, a beneficiary, or any other person who may have a right under the benefit contract. (V.T.I.C. Art. 10.28.)

#### Source Law

Art. 10.28. No money or other benefit, charity or relief or aid to be paid, provided or rendered by any such society shall be liable to attachment, garnishment, or other process, or be seized, taken or appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary or any other person who may have a right thereunder, either before or after payment.

#### Revisor's Note

(1) V.T.I.C. Article 10.28 refers to "money or other benefit, charity or relief or aid" to be paid by a fraternal benefit society. The references to "relief" and "aid" are omitted from the revised law because, in this context, "relief" and "aid" are included within the meaning of "benefit or charity."

(2) V.T.I.C. Article 10.28 refers to a benefit to be "provided or rendered" by a fraternal benefit society. The reference to "rendered" is omitted from the revised law because "rendered" is included within the meaning of "provided."

(3) V.T.I.C. Article 10.28 refers to a benefit being "seized, taken or appropriated or applied." The reference to "taken" is omitted from the revised law because "taken" is included within the meaning of "seized." The reference to "appropriated" is omitted from the revised law because in this context, "appropriated" is included within the meaning of "applied."

[Sections 885.317-885.350 reserved for expansion]

#### SUBCHAPTER H. AGENTS

##### Revised Law

Sec. 885.351. AGENTS. (a) A fraternal benefit society may



appoint an agent licensed by the department under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), to sell benefits listed under Section 885.301(a) to society members.

(b) A person may not solicit or procure benefit contracts for a fraternal benefit society unless the person is licensed as an agent under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code). (V.T.I.C. Art. 10.05, Subsec. (c); Art. 10.37-3, Subsec. (a).)

Source Law

[Art. 10.05]

(c) A society may appoint an agent licensed by the department under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), to sell benefits listed under Subsection (a) of this article to society members.

Art. 10.37-3. (a) A person may not solicit or procure insurance contracts for a society unless the person is licensed as an agent under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code).

Revisor's Note

Subsection (a), V.T.I.C. Article 10.37-3, refers to "insurance contracts." For consistency with other provisions of this chapter, throughout this subchapter the revised law substitutes "benefit contracts" for "insurance contracts." "Benefit contract," a defined term under Subsection (1), V.T.I.C. Article 10.03-1, revised as Section 885.001(2), is the type of insurance contract that a fraternal benefit society provides.

Revised Law

Sec. 885.352. EXCEPTION. (a) Section 885.351(b) does not apply to an agent, representative, or member of a fraternal benefit society who devotes less than 50 percent of the person's time to the solicitation and procurement of benefit contracts for that society.

(b) For purposes of this section, a person is presumed for a calendar year to have devoted at least 50 percent of the person's time to the solicitation or procurement of benefit

contracts if, in the preceding calendar year, the person solicited or procured on behalf of a fraternal benefit society:

(1) life insurance contracts that have generated, in the aggregate, more than \$20,000 of direct premiums for all lives insured;

(2) benefit contracts other than life insurance contracts that have insured the individual lives of more than 25 persons; or

(3) variable life insurance or variable annuity contracts.

(c) A person to whom this section applies may not solicit or procure on behalf of a fraternal benefit society an interest-sensitive life insurance contract that exceeds \$35,000 of coverage on an individual life unless the person holds the designation of fraternal benefit counselor. (V.T.I.C. Art. 10.37-3, Subsecs. (b), (c).)

Source Law

(b) An agent, representative, or member of a fraternal benefit society who devotes less than 50 percent of the person's time to the solicitation and procurement of insurance contracts for that society is exempt from the requirements of Subsection (a) of this article.

(c) For the purposes of Subsection (b) of this article, a person is presumed for a calendar year to have devoted at least 50 percent of the person's time to the solicitation or procurement of insurance contracts if, in the preceding calendar year, the person solicited or procured on behalf of a society:

(1) life insurance contracts that have generated, in the aggregate, more than \$20,000 of direct premiums for all lives insured, provided that an interest-sensitive life insurance contract has not been solicited or procured by a person that exceeds \$35,000 of coverage on an individual life unless that person holds the designation of "Fraternal Benefit Counselor";

(2) insurance contracts, other than life insurance contracts, that have insured the individual lives of more than 25 persons; or

(3) variable life insurance or variable annuity contracts.

Revised Law

Sec. 885.353. EMPLOYMENT OF CERTAIN PERSONS TO SOLICIT BUSINESS PROHIBITED. A fraternal benefit society may not employ or otherwise retain a person to solicit business if the person has had a license revoked under Article 21.07 or 21.14, or under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code). (V.T.I.C. Art. 10.37-2.)

Source Law

Art. 10.37-2. A fraternal benefit society may not employ or otherwise retain a person to solicit business if that person has had a license revoked under Articles 21.07 or 21.14, Insurance Code, or under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code).

[Sections 885.354-885.400 reserved for expansion]

SUBCHAPTER I. REGULATION OF FRATERNAL BENEFIT SOCIETIES

Revised Law

Sec. 885.401. ANNUAL REPORT. (a) Each fraternal benefit society engaged in business in this state shall annually, on or before March 1:

(1) file with the department in the form required by the commissioner a statement, under oath of the society's president and secretary or corresponding officers, of:

(A) the society's condition and standing on the preceding December 31; and

(B) the society's transactions for the preceding calendar year; and

(2) provide additional information the commissioner considers necessary to demonstrate the society's business and method of operation.

(b) The commissioner may periodically require any additional statement the commissioner considers necessary relating to a fraternal benefit society.

(c) The department or the state may use the report required under Subsection (a) in determining a fraternal benefit society's financial solvency. (V.T.I.C. Art. 10.30, Subsecs. (a), (d) (part).)

Source Law

Art. 10.30. (a) Every society transacting business in this State shall annually, on or before the first day of

March, file with the department in such form as the commissioner may require, a statement under oath of its president and secretary or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and its transactions for the year ending on that date, and shall furnish such other information as the commissioner may deem necessary to a proper exhibit of its business and plan of working. The commissioner may at other times require any further statement it may deem necessary to be made relating to such society.

(d) The annual report herein provided for may be used by the department or the State of Texas in determining the financial solvency of the society. . . .

Revisor's Note

Subsection (a), V.T.I.C. Article 10.30, refers to the "next preceding" December 31. A subsequent provision of V.T.I.C. Chapter 10 refers to "December 31st last preceding." Throughout this subchapter, the revised law omits "next" and "last" as unnecessary in this context. "The preceding" means "the next preceding" or "the last preceding."

Revised Law

Sec. 885.402. REPORTS OF CERTAIN GRAND LODGES. The officers of the supreme state governing body of a grand lodge considered to be a single state organization under Section 885.006 shall make each report required by this chapter. The report must include the transactions, liabilities, and assets of the state organization. (V.T.I.C. Art. 10.27 (part).)

Source Law

Art. 10.27. . . . [All grand lodges, by whatever name known, whether incorporated or not, holding charters from any supreme governing body, which were conducting business in this State upon the passage of this law as a fraternal beneficiary association, upon what is known as the separate jurisdiction plan, shall be treated as single State organizations, and] all reports required by the provisions of this chapter shall be made and furnished by the

officers of such supreme State governing body and shall embrace and contain the transactions, liabilities and assets of such State organization.

Revisor's Note

V.T.I.C. Article 10.27 provides that reports required under V.T.I.C. Chapter 10 shall be "made and furnished" by the supreme state governing body of certain grand lodges. The reference to "furnished" is omitted from the revised law because in this context, "furnished" is included within the meaning of "made."

Revised Law

Sec. 885.403. VALUATION OF BENEFIT CERTIFICATES. (a) A fraternal benefit society shall include in its report under Section 885.401 a valuation of the society's benefit certificates in force on the preceding December 31. The report of valuation shall show:

(1) as contingent liabilities, the present midyear value of the promised benefits provided by the fraternal benefit society's laws under the benefit certificates subject to valuation; and

(2) as contingent assets, the present midyear value of the future net premiums provided by the fraternal benefit society's laws as the premiums are in practice actually collected.

(b) At the option of a fraternal benefit society, instead of the valuation determined under Subsections (a)(1) and (2), the valuation may show the net value of benefit certificates subject to valuation under Subsection (a). The net value, when computed in case of monthly premiums, may be the mean of the terminal values for the end of the preceding and of the current insurance years.

(c) The valuation, including the valuation of benefit certificates, must be certified by an actuary or, at the request and expense of the fraternal benefit society, verified by the actuary of the insurance department of the society's home state.

(d) The legal minimum standard of valuation for all benefit certificates, other than benefit certificates for accident and health benefits, is computed using a mortality table and interest rate specified by Section 885.404.

(e) Each valuation report must set out clearly and fully the mortality and interest rates and the method of valuation.

(f) The report required by Section 885.401 must also include a valuation of benefit certificates in accordance with Section 885.408. (V.T.I.C. Art. 10.30, Subsec. (b) (part).)

Source Law

(b) Each society shall include in its annual report to the department a valuation of its certificates in force on December 31st last preceding. Such report of valuation shall show as contingent liabilities the present mid-year value of the promised benefits provided in the constitution and laws of such society, under the certificates subject to valuation; and as contingent assets the present mid-year value of the future net contributions provided in the Constitution and laws as the same are in practice actually collected. At the option of any society, in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provided, and said net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years. Such valuation including valuation of certificates shall be certified by an actuary, or, at the request and expense of the society, verified by the actuary of the Department of Insurance of the home State of the society. The legal minimum standard of valuation for all certificates, except for accident and health benefits, shall be [the National Fraternal Congress Table of Mortality as adopted by the National Congress, August 23, 1899; or, at the option of the society,] . . . . Each such valuation report shall set forth clearly and fully the mortality and interest bases and the method of valuation. The annual report required by this article shall also include a valuation of certificates in accordance with Article 10.07 of this code.

Revised Law

Sec. 885.404. MORTALITY TABLES; INTEREST RATES. (a) In valuing benefit certificates under Section 885.403, a fraternal benefit society, at the option of the society, may use:

(1) the National Fraternal Congress Table of Mortality, as adopted by the National Fraternal Congress, August 23, 1899;

(2) any table producing reserves in the aggregate at least as great as the reserves produced by the table described by Subdivision (1);

(3) the Commissioners 1941 Standard Ordinary Mortality Table;

(4) the Commissioners 1958 Standard Ordinary Mortality Table; or

(5) except as provided by Subsection (e), a table based on the society's own experience of at least 20 years and covering at least 100,000 lives.

(b) Notwithstanding Subsection (a), a fraternal benefit society may value the society's benefit certificates in accordance with valuation standards otherwise authorized by state law for the valuation of similar policies issued by life insurance companies.

(c) For any category of benefit certificates issued to insure a female risk, a modified net premium or present value referred to in Article 3.28 may be computed according to an age not more than six years younger than the actual age of the insured.

(d) The interest assumption used with a mortality table described by Subsection (a)(1), (2), (3), or (4) may not be more than 4-1/2 percent a year. The interest assumption used with a mortality table described by Subsection (a)(5) may not be more than four percent a year.

(e) A fraternal benefit society may not use a table based on the society's own experience for a benefit certificate issued on or after January 1, 1989. (V.T.I.C. Art. 10.30, Subsec. (b) (part).)

#### Source Law

(b) . . . [The legal minimum standard of valuation for all certificates, except for accident and health benefits,] shall be the National Fraternal Congress Table of Mortality as adopted by the National Congress, August 23, 1899; or, at the option of the society, any table producing reserves in the aggregate at least as great as the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress, August 23, 1899; at the option of the society, the Commissioners 1941 Standard Ordinary Mortality Table; or at the option of the society, the Commissioners 1958 Standard Ordinary Mortality Table, except that for any category of such certificates issued on female risks, all modified net

premiums and present values referred to in Article 3.28 of this code may be calculated according to an age not more than six (6) years younger than the actual age of the insured. The interest assumption to be used with any of the preceding mortality tables may not be more than four and one-half (4 1/2%) per centum per annum. As an alternative, the society may use a table based upon the society's own experience of at least twenty (20) years, and covering not less than one hundred thousand (100,000) lives with interest assumption not more than four (4%) per centum per annum, provided, however, that any society may value its certificates in accordance with valuation standards otherwise authorized by the laws of this state for the valuation of similar policies issued by life insurance companies provided that no society may use a table based on its own experience for certificates issued on or after January 1, 1989. . . .

Revised Law

Sec. 885.405. VALUATION OF AND SEPARATE FUND FOR DISABILITY BENEFITS. (a) A fraternal benefit society that provides for disability benefits shall keep the net premiums for disability benefits in a fund separate from all other benefit and expense funds and the valuation of all other business of the society.

(b) Notwithstanding Subsection (a), if a fraternal benefit society uses a combined premium table for both death and permanent total disability benefits:

(1) the valuation must be according to tables of reliable experience; and

(2) the society is not required to maintain a separation of those funds. (V.T.I.C. Art. 10.30, Subsec. (c).)

Source Law

(c) Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the valuation of all other business of the society; provided, that where a combined contribution table is used by a society for both death and permanent total disability benefits, the valuation shall be according to tables of reliable experiences,



and in such cases a separation of the funds shall not be required.

Revisor's Note

Subsection (c), V.T.I.C. Article 10.30, refers to maintaining a fund for disability benefits "separate and apart" from other funds. The reference to "apart" is omitted from the revised law because "apart" is included within the meaning of "separate."

Revised Law

Sec. 885.406. PUBLICATION OF VALUATION AND CONDITION. A fraternal benefit society shall publish, in the society's official paper, a statement of:

(1) the valuation provided by Sections 885.403 and 885.405; and

(2) an explanation of the facts concerning the society's condition disclosed by that valuation. (V.T.I.C. Art. 10.30, Subsec. (d) (part).)

Source Law

(d) . . . A statement of the valuation provided by this article and an explanation of the facts concerning the condition of the society thereby disclosed shall be printed in the society's official paper.

Revised Law

Sec. 885.407. SOLVENCY. A fraternal benefit society is considered solvent if its admissible assets are equal to or greater than its liabilities. (V.T.I.C. Art. 10.08 (part).)

Source Law

Art. 10.08. . . . A society is considered solvent as long as its admissible assets are equal to or greater than its liabilities.

Revised Law

Sec. 885.408. RESERVES FOR ACCIDENT AND HEALTH INSURANCE.  
(a) A fraternal benefit society shall establish reserves for the types of coverage specified by Sections 885.301(a)(4) and (5) in the same manner and to the same extent as required for a company organized under Chapter 841.

(b) Article 3.39 applies to reserve investments for a domestic fraternal benefit society. (V.T.I.C. Art. 10.07, Subsecs. (a), (b).)

Source Law

Art. 10.07. (a) Fraternal benefit societies shall establish reserves for the types of coverage specified in Articles 10.05(a)(4) and (5) of this code in the same manner and to the same extent as required for companies organized under Chapter 3 of this code except:

(1) for certificates issued during the calendar year 1988, only one-third of the unearned premium reserve is required to be maintained during the first policy year; and

(2) for certificates issued during the calendar year 1989, only two-thirds of the unearned premium reserve is required to be maintained during the first policy year.

(b) Article 3.39 of this code applies to reserve investments for fraternal benefit societies organized under the laws of this state.

Revisor's Note

(1) Subsection (a), V.T.I.C. Article 10.07, requires a fraternal benefit society to establish reserves for certain types of coverage in the same manner and to the same extent as required for certain companies, except that for benefit certificates issued during the calendar year 1988, only one-third of the unearned premium reserve is required to be maintained during the first policy year, and for benefit certificates issued during the calendar year 1989, only two-thirds of the unearned premium reserve is required to be maintained during the first policy year. The revised law omits these exceptions as obsolete because in each case, the first policy year has passed.

(2) Subsection (a), V.T.I.C. Article 10.07, requires a fraternal benefit society to establish reserves "in the same manner and to the same extent as required for companies organized under Chapter 3 of this code." The portions of Chapter 3 that govern the organization of domestic life, health, and accident insurance companies are revised as Chapter 841. The revised law is drafted

accordingly.

(3) Subsection (b), V.T.I.C. Article 10.07, refers to "fraternal benefit societies organized under the laws of this state." For consistency throughout this chapter, the revised law substitutes "domestic fraternal benefit society" for "fraternal benefit societies organized under the laws of this state."

(4) Subsection (c), V.T.I.C. Article 10.07, provides that Article 10.07 may not be construed to prevent or limit an action by or remedy available to the State Board of Insurance or the state under V.T.I.C. Article 21.28 or 21.28-A or other applicable law. The revised law omits this provision as unnecessary because Subsection (h), V.T.I.C. Article 10.30, revised as Section 885.414(a), provides that V.T.I.C. Chapter 10, which includes Article 10.07, may not be construed to prevent or limit an action by or remedy available to the Texas Department of Insurance or the state under V.T.I.C. Article 21.28 or 21.28-A or other applicable law. The omitted law reads:

(c) This article may not be construed to prevent, or in any way limit, any action by or remedy available to the State Board of Insurance or the State of Texas under Article 21.28 or 21.28-A of this code or other applicable law.

#### Revised Law

Sec. 885.409. REPORTING OF RESERVES. The report of a fraternal benefit society under Section 885.401 must show as a liability the reserves required by this chapter. (V.T.I.C. Art. 10.08 (part).)

#### Source Law

Art. 10.08. The reserves required by this chapter shall be reflected as a liability in the annual reports of a fraternal benefit society. . . .

#### Revised Law

Sec. 885.410. EXAMINATION OF DOMESTIC FRATERNAL BENEFIT SOCIETIES. A domestic fraternal benefit society is subject to Articles 1.15, 1.15A, and 1.16. (V.T.I.C. Art. 10.33, Subsec.

(a).)

Source Law

Art. 10.33. (a) Each domestic society is subject to Articles 1.15, 1.15A, and 1.16 of this code.

Revised Law

Sec. 885.411. EXAMINATION OF FOREIGN FRATERNAL BENEFIT SOCIETIES. (a) The commissioner or a person appointed by the commissioner may examine a foreign fraternal benefit society transacting or applying for admission to engage in business in this state. The commissioner may employ assistants for this purpose.

(b) The commissioner or a person appointed by the commissioner to examine a foreign fraternal benefit society:

(1) is entitled to free access to all books, papers, and documents that relate to the business of the society; and

(2) may summon, qualify as witnesses under oath, and examine the society's officers, agents, and employees and other persons in relation to the affairs, transactions, and conditions of the society.

(c) Instead of an examination under this section, the commissioner may accept the examination of the insurance department of the state, territory, district, province, or country in which a foreign fraternal benefit society is organized.

(d) If a foreign fraternal benefit society or the society's officers refuse to permit an examination under this section or to comply with the provisions of law relating to an examination, the commissioner shall suspend the society's authority to write new business in this state or refuse the society's application for a certificate of authority. A suspension or refusal under this subsection continues until the commissioner receives satisfactory evidence relating to the condition and affairs of the society. A foreign fraternal benefit society may not write any new business in this state during a suspension under this subsection.

(e) A foreign fraternal benefit society is subject to the provisions of Articles 1.15 and 1.16 that apply to an insurer that is not organized under the laws of this state but is authorized to engage in business in this state. (V.T.I.C. Art. 10.35.)

Source Law

Art. 10.35. The commissioner, or any person appointed by the commissioner, may examine any foreign society transacting or applying for admission to transact business

in this State. The commissioner may employ assistants, and the commissioner or the commissioner's appointee shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witnesses under oath and examine its officers, agents and employees and other persons in relation to the affairs, transactions and conditions of the society. The commissioner may accept in lieu of such examination the examination of the Insurance Department of the state, territory, district, province or country where such society is organized. If any such society or its officers refuse to permit such examination or to comply with the provisions of the law relative thereto, the authority of such society to write new business in this State shall be suspended, or license refused, until satisfactory evidence is furnished to the commissioner relating to the condition and affairs of the society, and during suspension the society shall not write any new business in this State. Each foreign society is subject to the provisions of Articles 1.15 and 1.16 of this code that are applicable to insurance carriers that are not organized under the laws of this State but are authorized to transact business in this State.

Revised Law

Sec. 885.412. ADVERSE PUBLICATION PROHIBITED. (a) Pending, during, or after an examination or investigation of a fraternal benefit society, the commissioner may not make public a financial statement, report, or finding, or permit a financial statement, report, or finding affecting the status, standing, or rights of the society to become public, until:

(1) the commissioner serves a copy of the statement, report, or finding on the society at its home office; and

(2) the society has been provided a reasonable opportunity to:

(A) answer the statement, report, or finding; and

(B) make a showing in connection with the statement, report, or finding as the society desires.

(b) This section does not apply to a proceeding involving a fraternal benefit society instituted by the commissioner or the state, including an administrative hearing, a proceeding under

Article 21.28 or 21.28-A, or a court proceeding. (V.T.I.C. Art. 10.36.)

Source Law

Art. 10.36. Pending, during or after an examination or investigation of any such society, either domestic or foreign, the Board of Insurance Commissioners shall make public no financial statement, report or finding, nor shall it permit to become public any financial statement, report or finding affecting the status, standing or rights of any such society until a copy thereof shall have been served upon such society, at its home office, nor until such society shall have been afforded a reasonable opportunity to answer any such financial statement or report or finding, and to make such showing in connection therewith as it may desire. This article does not apply to proceedings involving a fraternal benefit society instituted by the State Board of Insurance or the State of Texas including administrative hearings, proceedings under Article 21.28 or 21.28-A of this code, and court proceedings.

Revisor's Note

V.T.I.C. Article 10.36 refers to "any such society, either domestic or foreign." The revised law omits "domestic or foreign" as unnecessary. In the absence of language limiting the application of the revised law to only domestic or foreign fraternal benefit societies, the law applies to both.

Revised Law

Sec. 885.413. FEES. The department shall deposit fees collected under this chapter to the credit of the Texas Department of Insurance operating account. Article 1.31A applies to fees collected under this chapter. (V.T.I.C. Art. 10.01, Subsec. (a) (part).)

Source Law

(a) . . . Fees collected by the board under this article must be deposited in the State Treasury to the credit of the State Board of Insurance operating fund. Article 1.31A of this code applies to fees collected under this article.

Revisor's Note

Subsection (a), V.T.I.C. Article 10.01, requires fees to be deposited in the state treasury to the credit of the State Board of Insurance operating fund. Under the authority of Chapter 4, Acts of the 72nd Legislature, 1st Called Session, 1991, that fund was converted to an account in the general revenue fund. The revised law is drafted accordingly.

Revised Law

Sec. 885.414. REMEDIES NOT EXCLUSIVE. (a) This chapter does not prevent or limit any action by or remedy available to the department or the state under Article 21.28 or 21.28-A or other applicable law.

(b) In addition to any other provision of law relating to disciplinary action regarding a fraternal benefit society, Chapter 82 applies to a fraternal benefit society. (V.T.I.C. Art. 10.30, Subsec. (h); Art. 10.37-1.)

Source Law

[Art. 10.30]

(h) This chapter may not be construed to prevent or in any way limit any action by or remedy available to the department or the State of Texas under Article 21.28 or 21.28-A of this code or other applicable law.

Art. 10.37-1. In addition to any other provision of law relating to disciplinary action respecting fraternal benefit societies, Subsection 7, Article 1.10, of this code applies to fraternal benefit societies.

[Sections 885.415-885.450 reserved for expansion]

SUBCHAPTER J. CONVERSION OF FRATERNAL BENEFIT SOCIETY

Revised Law

Sec. 885.451. CONVERSION OF FRATERNAL BENEFIT SOCIETY TO MUTUAL OR STOCK COMPANY. (a) Subject to Subsection (b), a fraternal benefit society engaging in business in this state may convert to a mutual life insurance company or incorporated stock company by complying with this subchapter.

(b) A fraternal benefit society may not convert to a mutual life insurance company or incorporated stock company except on terms that, in the commissioner's opinion, will fully protect the rights and interests of the society's members and holders of

benefit certificates. (V.T.I.C. Art. 10.40, Secs. 1, 2 (part).)

Source Law

Art. 10.40

Sec. 1. Any fraternal benefit society with a lodge system and representative form of government, doing business in the State of Texas, may convert itself into a Mutual Benefit Company, or into an incorporated Stock Company, by conforming to the provisions of this act.

Sec. 2. . . . Provided that no such society shall convert itself into a mutual benefit or incorporated stock company except upon such terms and conditions as in the opinion of the Board of Insurance Commissioners of Texas shall fully protect the rights and interests of its members and policyholders; and . . . .

Revisor's Note

Sections 1 and 2, V.T.I.C. Article 10.40, refer to conversion of a fraternal benefit society into a "mutual benefit company." It is clear from the context of the provisions of Article 10.40 revised as this subchapter that the intent of the article is to permit a fraternal benefit society to convert to a company regulated under V.T.I.C. Chapter 11, revised as Chapter 882 of this code. An entity regulated under Chapter 882 is referred to as a "mutual life insurance company," and the revised law is drafted accordingly.

Revised Law

Sec. 885.452. MEETING OF LODGE REPRESENTATIVES; NOTICE. (a) The governing body of a fraternal benefit society that proposes converting to a mutual life insurance company or incorporated stock company shall call a meeting of lodge representatives. The meeting may not be held before the 90th day after the date the meeting is called.

(b) Not later than the 40th day before the date of the meeting, the fraternal benefit society shall mail to each society member or holder of a benefit certificate, at the member's or holder's mailing address as shown by the society's records, and to each lodge:

- (1) notice of the meeting; and
- (2) a general plan of the proposed conversion.



(c) Not later than the 20th day after the date of receipt of the notice, each lodge shall meet in a regular or called session to act on the proposal and choose a representative to the governing body for the state, if the society operates in more than one state.

(d) The lodge representatives chosen under Subsection (c) shall meet and choose the requisite number of representatives to which the state is entitled to the supreme or grand lodge, if that body is located in this state.

(e) A fraternal benefit society shall submit the plan of the proposed conversion to the commissioner, and the commissioner must approve the plan, before the society may submit the plan to the society's members, holders of benefit certificates, and lodges. (V.T.I.C. Art. 10.40, Secs. 2 (part), 3 (part).)

Source Law

Sec. 2. When it shall be determined by the governing body of a Fraternal Benefit Society to submit the proposed change to the members of the society, a meeting shall be called not less than ninety (90) days hence, and notice of such purpose with a general plan of the changes shall be mailed to each member or policyholder of the Society to their post office address as shown by the Society records, and all the subordinate lodges or branches of the Society, which notice shall be mailed at least forty (40) days prior to the day named in the call by the governing body. Within twenty (20) days after the receipt of such notice, each lodge or subordinate branch shall in Regular or Called Session pass upon the proposal and choose a representative or delegate, by whatever name the representative may be known, to the governing body for the State (if such Society be operating in more than one State). When the delegates or representatives so chosen to the State body shall have assembled they shall choose the requisite number of representatives or delegates to which the State may be entitled to the Supreme or Grand Lodge, if same be located in the State of Texas. . . . the plan of such change shall be submitted to and approved by the Board of Insurance Commissioners before it shall be submitted to the members or policyholders and the

subordinate lodges or branches as hereinbefore provided.

Sec. 3. Pursuant to said notice and convening of the supreme governing body, [there shall be adopted a resolution by] delegates representing lodges . . . .

Revisor's Note

Section 2, V.T.I.C. Article 10.40, refers to a "representative or delegate, by whatever name the representative may be known." Throughout this subchapter the revised law omits "delegate" and "by whatever name the representative may be known" as unnecessary. In this context, "delegate" is included within the meaning of "representative" because "representative" is a generic term that applies to any person chosen to represent the views of a member or lodge of a fraternal benefit society.

Revised Law

Sec. 885.453. RESOLUTION TO CONVERT; ADDITIONAL REQUIREMENTS. (a) As provided by the notice under Section 885.452 and after convening the supreme governing body of the fraternal benefit society, the lodge representatives shall vote on whether to adopt a resolution authorizing the conversion of the society to a mutual life insurance company or incorporated stock company. To take effect, the resolution must be approved by lodge representatives of lodges that constitute at least 60 percent of the total membership of the fraternal benefit society.

(b) The resolution authorizing the conversion must:

(1) set out or ratify a certificate of incorporation amending the fraternal benefit society's charter; and

(2) state:

(A) the society's name;

(B) the name of the new company by which the society will be known;

(C) the object of the company;

(D) the location of the company's principal office;

(E) the names of the principal officers of the company, who serve until their successors are elected and qualified; and

(F) the period, if any, of the duration of the company.

(c) If the fraternal benefit society is converting to a mutual life insurance company:

(1) the resolution authorizing the conversion must

also state the amount of the unencumbered surplus;

(2) the amount and form of the unencumbered surplus must comply with Sections 882.055, 882.301(a), 882.302, 882.304, and 882.404; and

(3) the conversion must comply with Sections 882.056(a) and (b), 882.057, 882.058, 882.059, and 882.101.

(d) If the fraternal benefit society is converting to an incorporated stock company:

(1) the resolution authorizing the conversion must also state:

(A) the amount of the surplus, the amount of capital stock authorized, and the number of shares into which the capital stock is divided; and

(B) the amount of capital stock to be immediately paid in;

(2) the amounts and form of the surplus and capital must comply with Sections 841.054, 841.055, 841.056, 841.057, 841.204, 841.205, 841.301, and 841.302; and

(3) the conversion must comply with Sections 841.058, 841.059(a)(1), 841.060, 841.061, 841.062, and 841.063. (V.T.I.C. Art. 10.40, Sec. 3 (part).)

#### Source Law

Sec. 3. Pursuant to said notice and convening of the supreme governing body, there shall be adopted a resolution by delegates representing lodges which comprise not less than sixty (60%) per cent of the total membership of the association authorizing the conversion of the said fraternal benefit society into a mutual or stock life insurance company, and shall set forth or ratify a certificate of incorporation, amending the society's charter, and shall set forth:

(a) The name of the society, and the name of the new corporation by which it shall thereafter be known . . . ;

(b) The object of the corporation;

(c) The location of its principal office . . . and the names of the principal officers of such corporation, who shall serve until their successors are elected and qualified;

(d) The period, if any, for the duration of the corporation;

(e) If the conversion is into a mutual benefit company there shall be set

forth the amount of the free surplus which in amount and form shall comply with Article 11.01 of this Code as amended; and such conversion shall comply with the requirements of Article 11.02 of this Code as amended, and . . . . If the conversion is into an incorporated stock company, there shall be set forth the amount of the surplus and the amount of the capital stock authorized, the number of shares into which it is divided, and the amount of capital stock to be immediately paid in, and in amount and form such capital and surplus shall be in conformity with Articles 3.02 and 3.02a of this Code, as amended; and such conversion shall comply with the requirements of Article 3.04 of this Code as amended, and . . . .

#### Revisor's Note

(1) Section 3, V.T.I.C. Article 10.40, refers to the "free surplus" of a mutual life insurance company. The revised law substitutes "unencumbered surplus" for "free surplus" because, in context, the phrases are synonymous and the phrase "unencumbered surplus" is more consistent with modern usage.

(2) Section 3, V.T.I.C. Article 10.40, refers to V.T.I.C. Articles 11.01, 11.02, 3.02, 3.02a, and 3.04, "as amended." The revised law omits the references to "as amended" because under Section 311.027, Government Code (Code Construction Act), applicable to the revised law, a reference to a statute applies to all reenactments, revisions, and amendments of the statute.

#### Revised Law

Sec. 885.454. CONVERSION DOCUMENTS. (a) A fraternal benefit society that converts to a mutual life insurance company or incorporated stock company shall file with the department:

- (1) the certificate of incorporation as adopted or amended; and
- (2) a report of the meeting of lodge representatives, certified by the presiding officers under the corporate seal of the fraternal benefit society.

(b) The certificate of incorporation must be incorporated in the charter of the proposed company. (V.T.I.C. Art. 10.40, Secs. 4, 5.)

Source Law

Sec. 4. The certificate of incorporation so adopted or amended shall be filed with the Board of Insurance Commissioners and be incorporated in the charter of the proposed Company.

Sec. 5. A report of said meeting certified to by the presiding officers under the corporate seal of such Society shall also be filed with the Board of Insurance Commissioners.

Revised Law

Sec. 885.455. SALE OF STOCK OF CONVERTED FRATERNAL BENEFIT SOCIETY. (a) If a fraternal benefit society converts to an incorporated stock company, each holder of a benefit certificate or other member of the society has a preference right to subscribe for the proportion of the total capital stock offered for sale that the amount of the member's insurance bears to the society's total insurance in force at the time the society's supreme governing body authorizes the conversion. The right provided by this subsection expires on the 90th day after the date the society's supreme governing body authorizes the conversion.

(b) Before an incorporated stock company that is converted from a fraternal benefit society may offer any stock for public sale, the society's membership has a preference right to purchase the stock. A member may not subscribe for or purchase more than:

(1) 25 percent of the capital stock of the new company; or

(2) 10 percent of the capital stock of the new company, if there are other members applying in writing to purchase stock whose subscriptions are not filled.

(c) If the membership of a converted fraternal benefit society has not subscribed for the total capital stock authorized, the new company may permit others who were not society members at the time of the conversion to subscribe for stock and hold equal rights in the ownership of the stock.

(d) Not later than the 10th day after the date a fraternal benefit society approves a resolution authorizing the society to convert to an incorporated stock company, the society shall notify each holder of a benefit certificate or other member of:

(1) the member's right to subscribe for and purchase the stock of the incorporated stock company;

(2) the amount of stock for which the member is entitled to subscribe; and

(3) all other terms of the subscription and purchase.

(e) The notice required under Subsection (d) must be in a form approved by the department. Proof of depositing a letter addressed to each holder of a benefit certificate or other member providing the notice in the approved form is considered proof of compliance with the requirements of Subsection (d) and this subsection. (V.T.I.C. Art. 10.40, Sec. 6.)

Source Law

Sec. 6. If such Fraternal Benefit Society be converted into a Stock Life Insurance Company, each and every policyholder, certificate holder, or other member of such Society, shall have a preference right for ninety (90) days after such determination to subscribe for the proportion of the total capital stock offered for sale, which the amount of his insurance bears to the Society's total insurance in force at the time of the conversion, which time shall be that at which the supreme governing body authorize the change.

Before any of the stock shall be offered for public sale, the membership of the Society shall have a preference in the purchase thereof, provided that no one member shall be allowed to subscribe or purchase more than twenty-five (25%) per cent of the capital stock of the new company, nor shall he subscribe or be allowed to purchase more than ten (10%) per cent of the capital stock of the new company if there be other members applying in writing for the purchase of stock whose subscriptions are not filled. If the membership shall not have subscribed for the total capital stock authorized, then others who were not members of the Society at the time of the conversion may be permitted to subscribe for stock and be allowed equal rights in the ownership thereof, with all other stockholders. It shall be the duty of such Fraternal Benefit Society desiring to be converted into a Stock Company to advise every member or policyholder of his right to subscribe for and purchase the stock of such Stock Life Insurance Company and of the amount of such stock for which he is entitled to subscribe and all other terms and conditions, in a form to be approved by the

Board of Insurance Commissioners within ten (10) days after such Society shall be voted to so convert itself into a Stock Company. Proof of depositing a letter addressed to all members or policyholders, conveying the advice, in the approved form as herein provided for, shall be deemed proof of compliance with the foregoing requirement.

Revised Law

Sec. 885.456. LEGAL EFFECT OF CONVERSION TO MUTUAL LIFE INSURANCE COMPANY. A fraternal benefit society that converts to a mutual life insurance company is subject to Chapter 882. (V.T.I.C. Art. 10.40, Sec. 3 (part).)

Source Law

Sec. 3. . . .

. . .

(e) If the conversion is into a mutual benefit company . . . upon such conversion such company shall be subject to all of the provisions of Chapter 11 of this Code. . . .

Revised Law

Sec. 885.457. COMPLETION AND LEGAL EFFECT OF CONVERSION TO STOCK COMPANY. (a) The conversion of a fraternal benefit society to an incorporated stock company is complete when the society has:

- (1) complied with this subchapter and other state law regulating the incorporation of a life insurance company; and
- (2) received from the commissioner its charter or certificate of authority to transact business as an incorporated stock company.

(b) A fraternal benefit society that converts to an incorporated stock company:

- (1) is considered by law to have each right, privilege, power, or authority of any other stock corporation organized for engaging in the business of life insurance in this state;
- (2) is subject to laws applicable to a stock corporation organized under Chapter 841 for engaging in the business of life insurance in this state;
- (3) is considered by law to be a continuation of the business of the fraternal benefit society on the formation of the new company or amendment of its former charter; and
- (4) succeeds to and is invested with each right, privilege, or franchise and all property of the former society,

including debts due on any account and all choses in action.

(c) On conversion of a fraternal benefit society to an incorporated stock company, the title to any real estate by deed or otherwise vested in the society vests in the company, and the title is not in any way impaired because of the conversion.

(V.T.I.C. Art. 10.40, Secs. 3 (part), 7.)

Source Law

Sec. 3. . . .

. . . .

(e) . . . If the conversion is into an incorporated stock company, . . . upon such conversion such company shall be subject to all of the provisions of Chapter 3 of this Code.

Sec. 7. When such Fraternal Benefit Societies shall have complied with the provisions of this article and the other laws of this State regulating the incorporation of Life Insurance Companys, and shall have received from the Board of Insurance Commissioners its charter or certificate of authority to transact business as a Stock Life Insurance Company, its reorganization and conversion into such Stock Company shall be complete. Such reorganization and converted corporation shall be deemed in law to have all the rights, privileges, powers, and authority of any other Stock corporation organized for doing a Life Insurance business in the State of Texas, and controlled by the laws applying thereto. The new corporation shall be deemed in law to be a continuation of the business of the Fraternal Benefit Society when the reorganization and conversion shall have been accomplished by the formation of a new Company or by amendment to its former charter, and such reorganized corporation shall succeed to and become invested with all and singular the rights, privileges, franchises, and all property, real, personal, or mixed, of the former Society, and all debts due on any account and all other things and choses in action theretofore belonging to such Fraternal Benefit Society, and all property rights, privileges, franchises, and all other



interest, shall thereafter be as effectually the property of such organized and converted corporation as they were the property of the former Fraternal Benefit Society, and the title to any real estate by deed or otherwise vested in the former Fraternal Benefit Society shall forthwith vest in such organized converted corporation, and the title thereto shall not in any way be impaired by reason of such change or reincorporation.

Revisor's Note

(1) Sections 3(e) and 7, V.T.I.C. Article 10.40, refer respectively to "all of the provisions of Chapter 3 of this Code" and to "the . . . laws of this State regulating the incorporation of Life Insurance Companys." The law governing incorporation of domestic life insurance companies is contained in the portion of Chapter 3 revised as Chapter 841. A converted company is also subject to the other provisions of Chapter 3 and other law applicable to any life insurance company organized under that chapter. The revised law is drafted accordingly.

(2) Section 7, V.T.I.C. Article 10.40, provides that on conversion of a fraternal benefit society to an incorporated stock company, the company "shall succeed to and become invested with all and singular the rights, privileges, franchises, and all property, real, personal, or mixed, of the former Society, and all debts due on any account and all other things and choses in action theretofore belonging to such Fraternal Benefit Society, and all property rights, privileges, franchises, and all other interest, shall thereafter be as effectually the property of such organized and converted corporation as they were the property of the former Fraternal Benefit Society." The revised law omits the references to "real," "personal," and "mixed" property because under Section 311.005(4), Government Code (Code Construction Act), "property" includes real and personal property and, by extension,

mixed property. That definition applies to the revised law. The reference to "things in action" is omitted from the revised law because "things in action" is included within the meaning of "choses in action." The reference to "all other interest" is omitted from the revised law because "all other interest" is included within the meaning of "all . . . rights . . . and . . . property." The provision that the property of the former fraternal benefit society "shall thereafter be as effectually the property of such . . . corporation" is omitted from the revised law as unnecessary; providing that the property vests in the corporation means that the property will effectually be the corporation's.

#### Revised Law

Sec. 885.458. CONTINUING OBLIGATIONS OF CONVERTED FRATERNAL BENEFIT SOCIETY. (a) The rights of each member, holder of a benefit certificate, or creditor and the standing of each claim against a fraternal benefit society that converts under this subchapter must be preserved unimpaired under the new corporation.

(b) Each debt, liability, and duty of a converted fraternal benefit society attaches to the new corporation and may be enforced against it to the same extent as if the debt or liability had been incurred or contracted by the new corporation.

(c) Each outstanding benefit certificate issued by a converted fraternal benefit society is a valid obligation of the new corporation without the issuance of a new certificate.

(d) A new corporation formed from a converted fraternal benefit society is obligated to perform each obligation owing by the society to a holder of a benefit certificate issued by the society. The holder may enforce a benefit certificate against the new corporation to the same extent as if the certificate had been issued by the new corporation after conversion.

(e) A pending suit in which a converted fraternal benefit society was a party is not affected by the conversion and may be prosecuted by or against the new corporation as if the conversion had not taken place. (V.T.I.C. Art. 10.40, Secs. 8, 9.)

#### Source Law

Sec. 8. The rights of all members, policyholders, creditors, and the standing of all claims under the former Fraternal Benefit Society shall be preserved unimpaired under the new corporation, and all debts,

liabilities, and duties of the former Fraternal Benefit Society shall thenceforth attach to the reorganized corporation, and may be enforced against it to the same extent as if said debts and liabilities had been incurred or contracted by the new corporation, and all outstanding benefit certificates or policies issued by the said Fraternal Benefit Society shall be valid obligations of the new incorporation without the issuance of new policies.

Sec. 9. Such organized and converted corporation shall be obliged to carry out and perform all of the obligations of every kind and character owing by the former Fraternal Benefit Society to the holders of its policies or beneficial certificates, and the same may be enforced against it to the extent as if said policies and beneficial certificates had been issued by it after conversion. Any pending suits wherein the former Fraternal Benefit Society was a party shall be unaffected by the conversion thereof and shall be prosecuted by or against such reorganized and converted corporation the same as if the conversion had not taken place.

#### Revisor's Note

Section 9, V.T.I.C. Article 10.40, refers to the duty of a corporation formed from a converted fraternal benefit society to "carry out and perform" the society's obligations. The reference to "carry out" is omitted from the revised law because "carry out" is included within the meaning of "perform."

#### Revised Law

Sec. 885.459. NAME OF CONVERTED FRATERNAL BENEFIT SOCIETY. The name of a mutual life insurance company or incorporated stock company to which a fraternal benefit society converts:

(1) must, if possible, be a continuation of the society's name; and

(2) may not, if the new company's name is changed from the society's name, be:

(A) the same as that of any other company engaging in business in this state; or

(B) a name similar to that of any other company

engaging in business in this state. (V.T.I.C. Art. 10.40, Sec. 3 (part).)

Source Law

Sec. 3. . . .

(a) . . . the name of the new corporation . . . which shall preferably be a continuation of the same name. Provided that if the new corporation shall change from the former name of the society, it shall not adopt the same name as that of any other such society doing business in this State, nor a name similar to that of any other society doing business in this State;

. . .

Revised Law

Sec. 885.460. PRINCIPAL OFFICE OF CONVERTED FRATERNAL BENEFIT SOCIETY. The principal office of a mutual life insurance company or incorporated stock company created by the conversion of a fraternal benefit society under this subchapter must be located in this state. (V.T.I.C. Art. 10.40, Sec. 3 (part).)

Source Law

Sec. 3. . . .

. . .

(c) The location of its principal office, which must be within the State of Texas; and . . .

Revised Law

Sec. 885.461. SOCIAL OR CHARITABLE CLUBS FORMED BY MEMBERS OF CONVERTED FRATERNAL BENEFIT SOCIETY. The members of a converted fraternal benefit society or the policyholders in the new corporation may form local clubs for social and charitable purposes. A club formed under this section:

(1) may not be connected with the management of the corporation; and

(2) does not affect the corporation's liability or the insurance in effect. (V.T.I.C. Art. 10.40, Sec. 10.)

Source Law

Sec. 10. The members of such Fraternal Benefit Society, or the policyholders in the chartered incorporated Company, may form local clubs for social and charitable purposes, but the same shall have no connection with the management of the affairs

of the corporation or affect its liability or the insurance in effect.

[Sections 885.462-885.500 reserved for expansion]

SUBCHAPTER K. TERMINATION OF FRATERNAL BENEFIT SOCIETY

Revised Law

Sec. 885.501. DISCONTINUATION OF BUSINESS BY DOMESTIC FRATERNAL BENEFIT SOCIETY. A domestic fraternal benefit society's certificate of authority becomes void if the society:

- (1) discontinues business for a period of one year; or
- (2) has fewer than 400 members holding benefit certificates. (V.T.I.C. Art. 10.19, Subsec. (h) (part).)

Source Law

(h) When any domestic society shall have discontinued business for the period of one (1) year, or has less than four hundred (400) members holding benefit certificates, its permanent certificate shall become null and void. . . .

Revisor's Note

Subsection (h), V.T.I.C. Article 10.19, refers to a fraternal benefit society's certificate of authority becoming "null and void." The reference to "null" is omitted from the revised law because "null" is included within the meaning of "void."

Revised Law

Sec. 885.502. INITIATION OF PROCEEDINGS FOR TERMINATION OF DOMESTIC FRATERNAL BENEFIT SOCIETY. (a) The commissioner may advise the attorney general of the commissioner's determination if:

- (1) after examining a domestic fraternal benefit society, the commissioner determines that the society:
    - (A) has failed to comply with any provision of this chapter;
    - (B) is exceeding its powers;
    - (C) is not fulfilling its contracts in good faith; or
    - (D) is engaging in business fraudulently; or
  - (2) the commissioner determines that a domestic fraternal benefit society:
    - (A) has, after its first year of existence, had fewer than 400 members; or
    - (B) has discontinued business.
- (b) The attorney general shall bring an action in quo

warranto against the fraternal benefit society if the attorney general determines that circumstances warrant the action.

(V.T.I.C. Art. 10.33, Subsec. (b) (part).)

Source Law

(b) Whenever after examination the commissioner is satisfied that any domestic society has failed to comply with any provisions of this chapter, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently; or whenever any domestic society, after the existence of one (1) year or more, shall have a membership of less than four hundred (400), or shall determine to discontinue business, the commissioner may present the facts relating thereto to the Attorney General, who shall, if he deem the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction, and . . . .

Revisor's Note

Subsection (b), V.T.I.C. Article 10.33, provides that under certain circumstances the attorney general may "commence an action in quo warranto in a court." The reference to "a court" is omitted from the revised law as unnecessary because an action in quo warranto may only be brought in a court.

Revised Law

Sec. 885.503. ISSUANCE OF INJUNCTION AND APPOINTMENT OF RECEIVER. (a) If it appears on the trial of an action brought under Section 885.502(b) that the fraternal benefit society should be closed, the court shall:

(1) enjoin the society from engaging in further business; and

(2) appoint a receiver for the society.

(b) A receiver appointed under Subsection (a)(2) shall:

(1) immediately take possession of the books, papers, money, and other assets of the fraternal benefit society; and

(2) promptly, under the court's direction, proceed to close the society's affairs and distribute its funds to the persons entitled to those funds.

(c) A court in this state may not hear an application for an injunction against or proceedings for the dissolution of or the appointment of a receiver for a domestic fraternal benefit society or lodge unless the attorney general makes the

application or brings the proceedings. (V.T.I.C. Art. 10.33, Subsec. (b) (part); Art. 10.34.)

Source Law

[Art. 10.33]

(b) . . . if it shall then appear upon the trial that such society should be closed, said society shall be enjoined from carrying on any further business and some person shall be appointed receiver of such society and shall proceed at once to take possession of the books, papers, moneys and other assets of the society, and shall forthwith, under the direction of the court, proceed to close the affairs of the society, and to distribute its funds to those entitled thereto.

Art. 10.34. No application for injunction against or proceedings for the dissolution of or the appointment of a receiver for any such domestic society or branch thereof shall be entertained by any court in the State unless the same is made by the Attorney General.

[Sections 885.504-885.700 reserved for expansion]

SUBCHAPTER O. CRIMINAL PENALTIES

Revised Law

Sec. 885.701. FALSE STATEMENTS; CRIMINAL PENALTY. (a) A person commits an offense if the person wilfully makes a false or fraudulent statement or representation:

(1) in or with reference to an application for membership in a fraternal benefit society authorized to engage in business in this state; or

(2) for the purpose of obtaining money from or benefits in a fraternal benefit society transacting business under this chapter.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not less than \$100 or more than \$500;

(2) confinement in jail for not less than 30 days or more than one year; or

(3) both the fine and confinement. (V.T.I.C. Art. 10.41.)

Source Law

Art. 10.41. Any person, officer, member or examining physician of any society

authorized to do business under the laws of this State relating to fraternal benefit societies who wilfully makes any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any society transacting business under this law, shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in jail for not less than thirty days nor more than one year, or both.

#### Revisor's Note

(1) V.T.I.C. Article 10.41 refers to "any person, officer, member or examining physician." The reference to an "officer, member or examining physician" is omitted from the revised law because these terms are included within the meaning of the term "person."

(2) V.T.I.C. Article 10.41 provides that a person who engages in certain prohibited conduct "shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in jail for not less than thirty days nor more than one year, or both." Subsequent articles of V.T.I.C. Chapter 10 contain similar provisions. Throughout this subchapter, the revised law provides that a person who engages in prohibited conduct "commits an offense" to be consistent with the terminology used in the Penal Code. In addition, under Chapter 12, Penal Code, offenses are designated as felonies or misdemeanors, and the highest category of misdemeanors, a Class A misdemeanor, is punishable by a fine not to exceed \$4,000, confinement in jail for not more than one year, or both the fine and confinement. Thus, throughout this subchapter, the revised law clarifies that such offenses are misdemeanors.

#### Revised Law

Sec. 885.702. SOLICITING MEMBERSHIP IN UNAUTHORIZED FRATERNAL BENEFIT SOCIETY; CRIMINAL PENALTY. (a) A person commits an offense if the person solicits membership for or in any manner assists in procuring membership in a fraternal benefit



society that is not authorized to transact business in this state.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$200. (V.T.I.C. Art. 10.42.)

Source Law

Art. 10.42. Whoever solicits membership for, or in any manner assists in procuring membership in any fraternal benefit society not licensed to do business in this State, or who shall solicit membership for, or in any manner assist in procuring membership in such society not authorized by law to do business in this State, shall be fined not less than fifty nor more than two hundred dollars.

Revised Law

Sec. 885.703. SOLICITING MEMBERSHIP IN LODGE OF UNAUTHORIZED FRATERNAL BENEFIT SOCIETY; CRIMINAL PENALTY. (a) A person commits an offense if the person solicits for or organizes a lodge of a fraternal benefit society without first obtaining from the commissioner a certificate of authority that entitles the society to engage in business in this state.

(b) An offense under this section is a misdemeanor punishable by:

- (1) a fine of not less than \$100 or more than \$250;
- (2) confinement in jail for not less than three months or more than six months; or
- (3) both a fine and confinement. (V.T.I.C. Art. 10.43.)

Source Law

Art. 10.43. Whoever solicits for or organizes lodges of such association as are defined to be a fraternal benefit society under the laws of this State, without first obtaining from the Commissioner of Insurance a certificate of authority showing that the association has complied with the provisions of such laws and is entitled to do business in this State, shall be fined not less than one hundred nor more than two hundred and fifty dollars, or be imprisoned in jail for not less than three nor more than six months, or both.

Revised Law

Sec. 885.704. EXCEPTION TO SOLICITATION OFFENSES. Sections 885.702 and 885.703 do not:

(1) prohibit a member of an existing lodge from soliciting a person to become a member of the lodge; or

(2) apply to a member of a lodge who participates in, directs, or conducts the organization or establishment of a lodge within the limits of the county in which the person resides or of the person's lodge district. (V.T.I.C. Art. 10.44.)

Source Law

Art. 10.44. No provision of the preceding articles shall prohibit any member of a local or subordinate lodge from soliciting any person to become a member of any local or subordinate lodge already in existence, nor apply to any members of any local or subordinate lodge who participate in, direct or conduct the organization or establishment of any local or subordinate lodge within the limits of the county of their residence or lodge district.

Revised Law

Sec. 885.705. GENERAL CRIMINAL PENALTY. (a) An officer, agent, or employee of a domestic fraternal benefit society commits an offense if the person neglects, refuses to comply with, or violates any provision of the laws of this state governing domestic fraternal benefit societies.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed \$200. (V.T.I.C. Art. 10.45 (part).)

Source Law

Art. 10.45. Any officer, agent or employe of any fraternal benefit society organized under the laws of this State who neglects or refuses to comply with or who violates any provision of the laws of this State governing such societies, shall [where the penalty is not provided for in the preceding articles of this chapter,] be fined not exceeding two hundred dollars.

Revised Law

Sec. 885.706. OTHER PENALTIES. Notwithstanding Section 885.705, if another section of this chapter provides a penalty for a violation of the section, the penalty provided in the other

section prevails. (V.T.I.C. Art. 10.45 (part).)

Source Law

Art. 10.45. . . . [Any officer, agent or employe of any fraternal benefit society organized under the laws of this State who neglects or refuses to comply with or who violates any provision of the laws of this State governing such societies,] shall where the penalty is not provided for in the preceding articles of this chapter, . . . .

CHAPTER 886. LOCAL MUTUAL AID ASSOCIATIONS

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CHAPTER 886. LOCAL MUTUAL AID ASSOCIATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 886.001. DEFINITION. In this chapter, "local mutual aid association" means an entity, including a society or